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Filing date: **05/12/2016**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91219888
Party	Plaintiff 4Life Trademarks, LLC
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Submission	Motion to Compel Discovery
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Signature	/Sean D. Garrison/
Date	05/12/2016
Attachments	2016-05-12 4Life v Senuvo Motion to Compel.pdf(44944 bytes ) Exhibit 1 - 3-2-16 email to Bean.pdf(179606 bytes ) Exhibit 2 - Senuvo Expert Disclosure.pdf(951358 bytes ) Exhibit 3 - 3-15-16 e-mail.pdf(173798 bytes ) Exhibit 4 - 3-24-16 e-mail.pdf(167993 bytes ) Exhibit 5 - April 11 14 20 correspondence.pdf(266293 bytes ) Exhibit 6 - 4-21-16 Letter to S Bean re document production.pdf(122245 bytes ) Exhibit 7 - Senuvo Response to O First Interrogs.pdf(213849 bytes ) Exhibit 8 - Senuvo Response to O First RFP.pdf(181205 bytes )

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

4Life Trademarks, LLC

Opposer,

v.

Senuvo, LLC

Applicant.

Opposition No. 91219888

Serial No. 86127647

For the mark: SENUVO

Published for Opposition:  
June 24, 2014

**Opposer's Combined Motion to (1) Compel Discovery and (2) Strike Applicant's Expert Disclosure, or in the Alternative to Compel Applicant to Provide the Required Expert Report**

Pursuant to 37 C.F.R. § 2.120(e), Opposer 4Life Trademarks, LLC ("Opposer"), hereby moves to compel Applicant, Senuvo, LLC ("Applicant") to provide proper written discovery responses and produce all of its responsive documents. Opposer further moves to strike Applicant's deficient Expert Disclosure, or, in the alternative, to compel Applicant to produce the full expert report required by FED. R. CIV. P. 26(a)(2).

**Certificate of Good Faith Consultation**

Pursuant to 37 C.F.R. § 2.120(e)(1), undersigned counsel certifies that he has made a good faith attempt, by written correspondence and by telephone conference, to resolve the issues set forth in the Motion, but the parties were unable to resolve their differences. These efforts included written correspondence on March 2, April 11, April 14, April 20 and April 21, 2016, as well as a telephone conference on March 15, 2016, all as discussed in more detail below.

**Factual Background**

On January 29, 2016, Opposer served Interrogatories and a Request for Production of Documents upon Applicant. Applicant's responses were due on March 4, 2016. On March 2, 2016, Opposer received Applicant's responses to the Interrogatories, which responses were

deficient in numerous respects as explained below, and a written response to the Request for Production. Apart from non-specific, boilerplate objections, which are improper, the response to each Request for Production was the same: “Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.” No documents were produced. Undersigned counsel immediately wrote to Applicant’s counsel noting the lack of any documents and stating “Although this is not a proper written response, we assume this means that your client’s responsive documents will be timely produced to us by Friday March 4. If, for any reason, that is not the case, please let me know immediately.” *See* Exhibit 1. Applicant’s counsel did not respond to the e-mail, and Applicant did not produce any documents on or before its deadline to do so.

On February 29, 2016, Applicant served a document entitled “Applicant’s Expert Witness Information.” *See* Exhibit 2. Applicant did not notify the Board of its intention to utilize an expert as required. *See* TBMP §401.03; *RTX Scientific Inc. v. Nu-Calgon Wholesaler Inc.*, 106 USPQ2d 1492, 1493 n.3 (TTAB 2013) (a party must notify the Board of its plan to use an expert (without including copies of expert disclosures)). Furthermore, Applicant did not provide a report or other disclosure setting forth: (i) a complete statement of all opinions the witness will express and the basis and reasons for them; (ii) the facts or data considered by the witness in forming them; or (iii) any exhibits that will be used to summarize or support them. Fed. R. Civ. P. 26(a)(2)(B). The extent of its disclosure is that its proposed expert will testify “regarding Opposer’s trademarks, Applicant’s trademark, and each of the defenses asserted by Applicant in its answer to the opposition.” *See* Exhibit 2. Undersigned counsel notified Applicant of this deficiency in his March 2 e-mail. *See* Exhibit 1.

On March 15, 2016, having received no response to the e-mail, undersigned counsel called Applicant's counsel to discuss Applicant's documents and inadequate expert disclosure. At that time, Applicant's counsel indicated he would need more time for Applicant to produce its responsive documents. Applicant's counsel refused to commit to providing a proper expert disclosure pursuant to Rule 26(a)(2) or even to notify the Board of its intent to use an expert witness as required. Undersigned counsel sent a follow-up e-mail the same day reiterating Opposer's position. *See* Exhibit 3. On March 24, 2016, Applicant's counsel stated he would need until April 4 to produce his client's documents. *See* Exhibit 4.

Applicant did not produce any documents by the extended April 4 deadline, nor did it request any further extension. Undersigned counsel again wrote to Applicant's counsel on April 11, April 14 and April 20, 2016 regarding Applicant's discovery responses, documents and expert disclosures but received no response to those e-mails or letters. *See* Exhibit 5.

On April 21, 2016, Applicant served some additional discovery upon Opposer and then produced 76 pages of documents. The documents were neither produced "as they are kept in the usual course of business" nor "organize[d] and label[ed] . . . to correspond to the categories in the request," as dictated by Fed. R. Civ. P. 34(b)(2)(E)(i). Undersigned counsel immediately wrote to Applicant's counsel seeking a proper production of documents and a proper written response to the Request for Production in compliance with Rule 34. *See* Exhibit 6. Applicant has continued to ignore undersigned counsel's attempts to resolve the matter.

### **Applicant's Inadequate Responses, Production and Expert Disclosure**

#### **A. The Board Should Compel Applicant to Supplement its Interrogatory Responses**

A copy of Applicant's Responses to Opposer's First Set of Interrogatories is attached as Exhibit 7. Opposer moves for an order compelling Applicant to supplement its answers to

Interrogatory Nos. 4, 9, 14, 15, 16 and 17 because these answers are currently non-responsive or incomplete.

For several reasons, Applicant's non-specific, boilerplate objections to Opposer's interrogatories should be overruled. First, boilerplate objections are improper. *See, e.g., Mancia v. Mayflower Textile Servs. Co.*, 253 F.R.D. 354, 364 (D. Md. 2008). Rule 33(b)(4) requires that "[t]he grounds for objecting to an interrogatory must be stated with specificity." Applicant has failed to do so. As such, any objections are waived. *Id.* Furthermore, when a party interposes objections and then answers the interrogatory, the objections should likewise be deemed waived. *See Tardif v. People for the Ethical Treatment of Animals*, 2011 U.S. Dist. LEXIS 47132 (M.D. Fla. 2011) ("Objecting but answering subject to the objection is not one of the allowed choices under the Federal Rules.") Setting aside the objections, Applicant's answers are deficient.

Interrogatory No. 4: This interrogatory asks for "the dates during which [Applicant's] Products have been made available for sale" on each of the websites identified in its answer to Interrogatory No. 4. Applicant has failed to fully answer the interrogatory because the only date information provided for each website is "at least as early as [YEAR]." Opposer is entitled to know the exact date when the products were first made available and whether they are still being made available or, if discontinued, the date on which they were discontinued. The Board should order Applicant to provide a supplemental response that fully responds to the interrogatory.

Interrogatory No. 9: This interrogatory asks Applicant to describe any plans to expand use of its mark to other products, geographies, distribution networks or otherwise. After repeating its non-specific boilerplate objections, Applicant merely states that it intends to use the mark for the goods and services listed in its application. That does not answer the question posed. The Board should order Applicant to amend the answer to describe the plans to expand

beyond the current use, if any such plans exist. *See, e.g., Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 10 USPQ2d 1671, 1675 (TTAB 1988) (intent to expand business to include products similar to the other party is relevant); *J.B. Williams Co. v. Pepsodent G.m.b.H.*, 188 USPQ 577, 580 (TTAB 1975) (information regarding geographic areas of distribution of goods is relevant to questions of likelihood of confusion).

Interrogatory No. 14: This interrogatory addresses Applicant's Third Defense, which claims Opposer cannot expand the use of its mark to other goods in Classes 3, 5, 30 and 32. The interrogatory asks Applicant to explain its position of why Opposer cannot do so. The answer provided is not responsive to the question. Why does Applicant contend that Opposer cannot expand the use of its mark to goods in these other classes? Applicant has asserted this defense. Opposer is entitled to understand the basis for it. The Board should order Applicant to amend its answer to answer the very simple question posed.

Interrogatory No. 15: This interrogatory addresses Applicant's unclean hands defense. The answer merely states that Applicant is in the process of collecting information, and it "may supplement" its answer. Applicant provides no facts upon which an unclean hands defense can be based. Opposer is entitled to know what facts Applicant claims to have, as of the date of its answer to the interrogatory, to support the asserted defense. The Board should order Applicant to amend the answer either to provide those facts or to state that Applicant is currently not aware of any facts.

Interrogatory No. 16: This interrogatory addresses Applicant's Seventh Defense and requires Applicant to "set forth your proposed amended recitation of goods for Your Application, incorporating all of your proposed restrictions and limitations." Applicant's answer merely

refers back to its pleading, which does not set forth any recitation of goods but only says that an amendment should be made. The Board should order Applicant to answer Interrogatory No. 16.

Interrogatory No. 17: This interrogatory addresses Applicant's counterclaim to restrict Opposer's registration and requires Applicant to "set forth your proposed amended recitation of goods. . . , incorporating all of your proposed restrictions and limitations." Applicant's answer merely refers back to its pleading, which contains no specific proposed amended recitation of goods for Opposer's Registration. The Board should order Applicant to answer Interrogatory No. 17.

**B. The Board Should Compel Applicant to Provide Proper Written Responses to Opposer's Document Requests and to Produce All of Its Responsive Documents**

Applicant produced only 76 pages of documents in response to Opposer's Request for Production of Documents. At least one of the documents produced explicitly refers to other documents, which have not been produced. *See* Exhibit 6, April 21 Letter to Steven Bean.

In addition, it is impossible to tell from Applicant's written responses whether any responsive documents have been produced or whether documents have been withheld pursuant to an objection. As discussed, above non-specific boilerplate objections are improper and waived. The same argument holds true for Applicant's document request responses. Furthermore, even if the objections were to be considered, Rule 34(b)(2)(C) requires that "An objection must state whether any responsive materials are being withheld on the basis of that objection." None of Applicant's boilerplate objections satisfy this requirement. Finally, each written response states that "Applicant will produce relevant, non-privileged documents, *if any*, responsive to this request." *See* Exhibit 8 (emphasis added) However, Applicant has not produced its documents organized and labeled to correspond to the requests, so Opposer is unable to decipher which

documents are responsive to which request, if any documents are responsive to more than one request, or if Opposer has produced no documents in response to a request.

Opposer, therefore, requests that the Board enter an order compelling Applicant to serve an amended response to each request identifying by Bates number the documents produced that are responsive and/or stating that Opposer does not have any responsive documents within its possession, custody or control. To the extent Applicant has withheld any documents pursuant to an objection asserted in its written responses, the Board should order Applicant to produce those documents on grounds that the objection has been waived. Finally, the Board should order Applicant to produce all of its responsive documents, including but not limited to (1) “Senuvo’s Policies and Procedures, including the Terms and Conditions here in;” and (2) “Senuvo Declarations & Notices to Enrollers Using Paper Membership Applications,” which are explicitly identified in the document produced by Applicant and Bates number SV000144.

C. The Board Should Strike Applicant’s Expert Witness Disclosure, or in the Alternative, Order Applicant to Properly Disclose Any Expert It Intends to Offer

Despite Opposer’s repeated requests that Applicant notify the Board of Applicant’s intention to call an expert witness and provide a disclosure that complies with Rule 26(a)(2), Applicant has refused to do so. *RTX Scientific Inc. v. Nu-Calgon Wholesaler Inc.*, 106 USPQ2d 1492, 1493 n.3 (TTAB 2013) (a party must notify the Board of its plan to use an expert). The extent of Applicant’s expert “disclosure” is that its proposed expert will testify “regarding Opposer’s trademarks, Applicant’s trademark, and each of the defenses asserted by Applicant in its answer to the opposition.” *See* Exhibit 2. That is wholly inadequate under the Rules. Accordingly, the Board should strike Applicant’s expert disclosure and prohibit Applicant from offering any expert testimony during any of its testimony periods. Alternatively, the Board should order Applicant to either comply with Rule 26(a)(2) or to formally withdraw its proposed

expert. If Applicant is given the opportunity to comply with Rule 26(a)(2), the Board should afford Opposer the opportunity to disclose a rebuttal expert and set new discovery deadlines sufficient to allow the parties to conduct expert discovery.

### Conclusion

For the foregoing independent reasons, Applicant's discovery responses and expert disclosure do not comply with the discovery rules. Therefore, the Board should grant Opposer's Motion and compel Applicant to provide proper responses to the Interrogatories and Request for Production and to produce all of its responsive documents. It should further preclude Applicant from offering any expert testimony in this case or, alternatively, compel Applicant to comply with Rule 26(a)(2).

Respectfully submitted this 12<sup>th</sup> day of May, 2016.

BACAL LAW GROUP, P.C.

By: /s/Sean D. Garrison

Glenn Spencer Bacal  
David Mark Andersen  
Sean D. Garrison  
Bacal Law Group, P.C.  
6991 E. Camelback Rd., Ste D-102  
Scottsdale, AZ 85251  
Telephone: 480.245.6233  
Fax: 480.245.6231

*Attorneys for Opposer,  
4Life Trademarks, LLC*

**Certificate of Mailing or Transmission Pursuant to 37 C.F.R. § 2.119**

Application No.: 86127647  
Mark: SENUVO  
Opposer: 4Life Trademarks, LLC  
Type of Filing: Motion to Compel

I hereby certify that this Motion to Compel is being filed electronically with the United States Trademark Trial and Appeal board 37 C.F.R. §2.119.

I hereby further certify that this Motion to Compel is being served electronically, pursuant to the agreement of the parties, and by U.S. Mail to:

Stephen H. Bean, Esq.  
LEGENDS LAW GROUP, PLLC  
93 South Main, Suite 3  
Kaysville, UT 84037  
[steve@legendslaw.com](mailto:steve@legendslaw.com)

*Attorney of Record for the Applicant,  
Senuvo, LLC*

\_\_\_\_\_  
/s/Sean D. Garrison  
Signature

\_\_\_\_\_  
May 12, 2016  
Date

# EXHIBIT 1

## Sean Garrison

---

**From:** Sean Garrison  
**Sent:** Wednesday, March 02, 2016 5:35 PM  
**To:** steve@legendslaw.com  
**Cc:** Glenn Bacal; 'andra@legendslaw.com'  
**Subject:** FW: 4Life (RENUVO) v. Senuvo (SENUVO) 53287-5189

Mr. Bean,

I am following up on my e-mail of February 9 (below) and a couple of other discovery issues. First, we have received today your client's responses to our written discovery, which we are reviewing. No documents have been produced, but your responses state that responsive documents, if any, "will be produced." Although this is not a proper written response, we assume this means that your client's responsive documents will be timely produced to us by Friday March 4. If, for any reason, that is not the case, please let me know immediately.

Second, we have also received your expert disclosures. We note that you have not yet notified the Board that you intend to use expert testimony as required. See TBMP §401.03; *RTX Scientific Inc. v. Nu-Calgon Wholesaler Inc.*, 106 USPQ2d 1492, 1493 n.3 (TTAB 2013) (a party must the notify the Board of its plan to use an expert (without including copies of expert disclosures), and that it has made required expert disclosures to adversary; the best practice is to notify the Board concurrently with the expert disclosures to adverse party). Please do so.

Also, the expert disclosure we have received for Mr. Silverman is deficient in that you have not provided a written report meeting the requirements of Fed. R. Civ. P. 26(a)(2)(B)(i), (ii), (iii) and (vi). The one sentence of "expected subject of testimony" is not a meaningful disclosure. Please either produce the proper expert report or a notice withdrawing Mr. Silverman as an expert witness.

Finally, with regard to depositions of your client and my e-mail below to which I have received no response, it remains my preference to try to agree upon deposition dates. Please call me so that we can get dates on the calendar. Thank you.

Sean D. Garrison  
**Bacal Andersen & Garrison Law Group**  
DD: 480-719-8501

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New Articles and Latest News About our Firm

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**From:** Sean Garrison  
**Sent:** Tuesday, February 09, 2016 10:13 AM  
**To:** 'steve@legendslaw.com'  
**Cc:** David Andersen; Glenn Bacal  
**Subject:** 4Life (RENUVO) v. Senuvo (SENUVO) 53287-5189

Mr. Bean,

I have recently joined Glenn and David and will be working on this case. Attached are courtesy copies of the initial written discovery we served on January 29. By our calculation, your client's responses are due on Friday, March 4. As you know, we have a discovery deadline of March 30. Therefore, I am reaching out to you now so that we can try to schedule the 30(b)(6) deposition

of Senuvo, as well as the individual depositions of Mr. Davis and others who may be identified in your discovery responses, at a mutually convenient time. I anticipate taking the depositions in Salt Lake and propose the March 22-25 time frame. We should probably reserve a couple of days, because at this point, I do not know how many depositions we will need to take. I will know more once we receive your client's discovery responses, and if we need any more time than that, I will be able to let you know then. Please check with your client and get back to me by early next week, so that I can make appropriate travel arrangements. If for some reason that date range does not work for you and your client, please let me know right away, so we can try to agree on alternative dates. Thanks.

Sean D. Garrison

**Bacal Andersen & Garrison Law Group**

6991 East Camelback Suite D-102

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Check Out Our New Website: [www.ipdepartment.com](http://www.ipdepartment.com)

New Articles and Latest News About our Firm

# **EXHIBIT 2**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of:  
Application Serial No. 86127647  
for the mark SENUVO

4Life Trademarks, LLC  Opposer  v.  Senuvo, LLC  Applicant	Opposition No. 91219888  <b>APPLICANT’S DISCLOSURE OF EXPERT WITNESS INFORMATION</b>
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Applicant Senuvo, LLC (“Applicant”) hereby discloses the identity of the expert witnesses from who it intends to obtain expert testimony in this proceeding, including those experts from whom an expert report will not be required.

<b>Expert</b>	<b>Expected Subject of Testimony</b>
Bruce Silverman Silverman Consulting LLC 3168 Dona Mema Place Studio City, CA 91604 (323) 654-7659	Mr. Silverman is expected to provide expert witness testimony regarding Opposer’s trademarks, Applicant’s trademark, and each of the defenses asserted by Applicant in its answer to the opposition.

Dated: February 29, 2016.

SENUVO, LLC

By: 

Stephen H. Bean, Esq.,  
Legends Law Group, PLLC  
330Main  
Kaysville, UT 84037  
(801) 337-4500  
Attorney for Applicant

**Certificate of Service**

I hereby certify that on Monday, February 29, 2016, I caused a true and correct copy of **APPLICANT'S DISCLOSURE OF EXPERT WITNESS INFORMATION** to be delivered by email, as agreed between the parties, as follows:

Glenn Spencer Bacal  
Bacal Law Group, P.C. 6991 E. Camelback Rd., Ste D-  
102 Scottsdale, AZ 85251  
[Glenn.Bacal@bacalgroup.com](mailto:Glenn.Bacal@bacalgroup.com)

with a copy to :  
Jamie Tuccio  
[Jamie.Tuccio@bacalgroup.com](mailto:Jamie.Tuccio@bacalgroup.com)

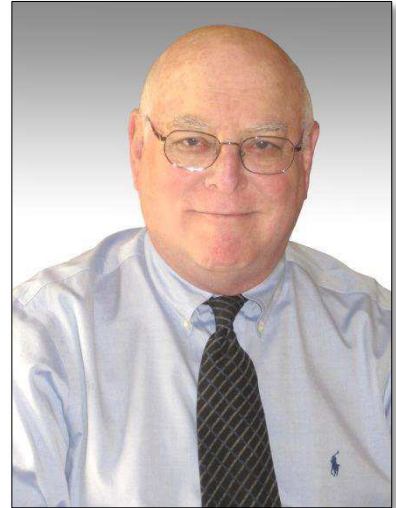
By: Steve Beam

# EXHIBIT A

# SILVERMAN CONSULTING LLC

**Bruce Silverman** is one of America's most respected advertising and branding experts.

Prior to forming Silverman Consulting LLC in 2005, Bruce served as EVP/Executive Creative Director at three of America's largest advertising agencies (Ogilvy, Bozell and BBDO), as President of two of the nation's best independently-owned agencies (Asher/Gould and Wong Doody), and as President/CEO of the principal U.S. unit of the world's largest media planning and buying shop (Initiative Worldwide). A long-time member of the Board of Directors of the American Association of Advertising Agencies, he also served as Vice Chairman of the Western Region of the AAAA and Vice President of the Los Angeles Advertising Agency Association.



Bruce provides advice and counsel to companies both in the U.S. and abroad engaged in marketing consumer goods and services. In addition, he works with law firms as an expert witness on cases relating to false and misleading advertising, trademark infringement, consumer confusion, branding, publicity rights, advertising industry custom and practice and media. Bruce has testified numerous times in state and federal courts as well as before the Copyright Royalty Judges of the Library of Congress.

Bruce was the creative mind behind "Don't Leave Home Without It" for American Express, "Bullish on America" (Merrill Lynch), "Something Special in the Air" (American Airlines), "Not made in 'Nooo Yawk Ciddy" (Pace Picante), "The Shell Answer Man" and a dozen other award winning campaigns for such clients as IBM, Hershey's, Baskin-Robbins, Coldwell Banker, Sizzler, Suzuki, Pabst, Sanyo, Mattel, Greyhound and Post. He is particularly proud of the very successful tobacco-use prevention campaign he created and directed for the California Department of Health Services which became the prototype for virtually every anti-tobacco campaign in the world. At Initiative Media, he supervised more than \$10 billion in annual media planning and buying for more than 500 clients including Disney, Electronic Arts, Carl's Jr., Taco Bell, Albertson's, Acura, Bally's Health & Fitness, Six Flags, America Online, the United States Navy and Yahoo!

Bruce has appeared frequently on television and radio and has been interviewed by *The New York Times*, *The Wall Street Journal*, *The New Yorker* and many other newspapers and magazines on subjects relating to advertising and media. He has taught advertising at Pepperdine

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BRUCESILVERMANCONSULTING.COM

University and UCLA Extension, and has guest lectured at the UCLA Anderson School of Management, UCLA Fielding School of Public Health, USC, California State University Northridge, California State University San Diego, California State University San Francisco, Rice University, the University of Houston, the University of Texas, the Thunderbird School of Management, NYU, Stanford and the University of Hawaii.

Bruce has also served as a board director and/or advisory board member for a number of media-related companies including Triton Media, 24/6, Inc., NFH, Inc., Adam, Inc., Telecentris, Inc., Big Moving Pictures, Inc., NTB Media, Inc., Bulzi Media, Inc. and Madison Avenue Media, Inc.

A graduate of Adelphi University in New York (where he has been honored as a “Distinguished Alumnus”), Bruce is a confirmed theater, music and arts junkie, voracious reader, sports fan and world traveler. He is also very active in community activities. He was a founding board member of the Los Angeles Children’s Museum and later served as Chairman of the Resource Development Committee of the Starbright Foundation. In addition, he served for six years as a member of the Dean’s Advisory Board of UCLA Extension, for three years as a member of the County of Los Angeles Public Library Strategic Plan Advisory Council and he has been an active member of The Television Academy (the Emmy’s organization) for a quarter-century. Bruce is married to Nancy Cole Silverman, a former radio and publishing executive who is the author of the novels *Beyond a Doubt*, *Shadow of Doubt*, *When in Doubt*, *Don’t!*, *Ode to Kokopelli*, *The Centaur’s Promise* and *The Salvationist*.

# SILVERMAN CONSULTING LLC

## **BRUCE G. SILVERMAN**

### *CURRICULUM VITAE*

May 2005 – Present

#### **SILVERMAN CONSULTING LLC (Los Angeles) Principal**

Advertising and branding consultant to advertisers and advertising agencies in the U.S., Europe and Asia engaged in marketing consumer goods and services. Consultant and expert witness for law firms throughout the U.S. on cases where false/misleading advertising, trademark infringement, advertising industry custom and practice, publicity rights and/or media are at issue.

January 2004 – April, 2005

#### **WONG DOODY ADVERTISING (Los Angeles) President and Partner**

Privately-owned, award-winning advertising agency with offices in Los Angeles and Seattle. Clients included Alaska Airlines, Alpine Electronics, Autodesk, Clif Bar, Inc., Los Angeles Dodgers, MGM Home Entertainment, Sony Pictures, UCLA/Anderson School of Management.

April, 1997 – Dec., 2003

#### **INITIATIVE PARTNERS (Los Angeles) President/CEO; Member, Initiative Worldwide Board of Directors**

Principal U.S. unit of world's largest (\$22BB+) advertising media planning and buying agency. Clients included Albertson's, Arco, Carl's Jr./Hardee's, Baskin-Robbins, Cisco Systems, Walt Disney Company, E\*Trade, HealthNet, The Home Depot, Taco Bell, Unilever, plus more than 100 advertising agencies operating throughout the United States and Canada.

January 86 – March ‘97

**ASHER/GOULD ADVERTISING, INC. (Los Angeles)**  
**President, Chief Creative Officer, Chief Operating Officer and Partner**

Privately-owned, top 100 advertising agency with offices in Los Angeles and Las Vegas. Clients included American Savings Bank, Avery Dennison, Baskin-Robbins, ITT/Sheraton, The Men’s Wearhouse, Pabst Brewing Company, Pizza Hut, Sanyo, Southern California Cable Marketing Council, Suzuki cars and trucks, State of California Department of Health Services, SunAmerica,

January 84 – December ‘86

**BBDO/WEST, INC. (Los Angeles, San Francisco)**  
**Executive Vice President, General Manager, Chief Creative Officer and Director**

West Coast division of Top 10 global advertising agency. Accounts included Apple Computer International, Coldwell Banker, Hughes Supermarkets, PIP Printing, Sanyo/Fisher, Sebastiani Vineyards, Sizzler, Southern California Dodge Dealers, Union Bank

January 81 – December ‘83

**BOZELL & JACOBS, SOUTHWEST, INC. (Dallas)**  
**Executive Vice President, Chief Creative Officer**

Southwest division of Top 10 U.S. advertising agency. Accounts included American Airlines, Armour Foods, Avis, Greyhound, Mary Kay, Pace Foods, Quaker Oats, Symantec, Zale Corporation.

August 67 – December ‘80

**OGILVY & MATHER, INC. (New York)**  
**Senior Vice President, Executive Creative Director, Member, O&M USA Council of Directors**

Top five global advertising agency. Executive Creative Director and General Manager, O&M Los Angeles (1977-80); Creative Director, O&M Houston (1974-77); Associate Creative Director, O&M London (1974), Associate Creative Director, O&M New York (1972-73).

Accounts included American Express, British Travel Association, Dove, French Tourism, IBM, Imperial Margarine, KLM, Korean Airlines, Panasonic, Post cereals, Puerto Rico Tourism, Mattel, Maxwell House, MTV, Mercedes Benz, Merrill Lynch, Nabisco, Nickelodeon, Shell, Smith Barney, Trailways, TWA, Universal Studios,

**EDUCATION**

June 1966 BA, Adelphi University, Garden City, New York

## INDUSTRY

Vice Chairman, Western Region – American Association of Advertising Agencies (industry trade association) (1995-2002)

National Board of Directors – American Association of Advertising Agencies (1995-2002)

Vice President – Los Angeles Advertising Agencies Association (1995-2002)

Member, Los Angeles Advertising Club (1978-1980; 1984-2005)

Vice President – Dallas Advertising Club (1981-1983)

Vice President – Houston Advertising Federation (1975-1977)

Member – The Television Academy

Director – Los Angeles Chapter, Forensic Expert Witness Association

## TEACHING POSITIONS

Instructor: Pepperdine University, UCLA Extension

Guest Instructor: Arizona State University, California State University Northridge, California State University San Diego, California State University Los Angeles, California State University San Francisco, New York University, Rice University, Southern Methodist University, Stanford University, University of Arizona, University of California (Berkeley), UCLA Anderson School of Management, UCLA Fielding School of Public Health, University of Hawaii, University of Houston, University of Southern California, University of Texas, Thunderbird School of Management; Dean's Board of Advisors, UCLA Extension

## OTHER

Author: *How to Create Tobacco-Use Prevention Advertising That Works*; University of Florida Press, 1996

Author: *How to Complain for Fun and Profit*; Schulzke Publishing, 2008

Media Appearances: Frequent “advertising/marketing guest authority” on Bloomberg News, NBC News, ABC 20/20; cited in articles in *Wall Street Journal*, *New York Times*, *Los Angeles Times*, *USA Today*, *Advertising Age*, *AdWeek*

**AWARDS:**

Multiple Clios, One Show “Pencils,” multiple Beldings, two Gold Lions at Cannes International Advertising Festival; three “Effie” awards, two David Ogilvy Awards.

**CLIENTS SERVED (BY CATEGORY)**  
**(Partial List; 1968-2015)**

**Apparel/Fashion**

C& R Clothiers (Asher/Gould)  
Cherokee Apparel (Asher/Gould)  
The Men's Wearhouse (Asher/Gould)  
Harris & Frank Clothiers (Asher/Gould)  
Kennedy's Clothiers (Asher/Gould)  
Mervyn's (Wong Doody)  
Nordstrom (Wong Doody)

**Automotive**

Acura (Initiative)  
Chevrolet (Initiative)  
Dodge and Dodge Dealer Associations (BBDO)  
Kia (Initiative)  
Jaguar (Bozell)  
Mercedes-Benz (Ogilvy)  
Peugeot (Ogilvy)  
Suzuki (Asher/Gould)

**Beverages**

Ballantine Ale (Asher/Gould)  
Brew 102 Beer (Asher/Gould)  
Country Club Malt Liquor (Asher/Gould)  
Country Time Lemonade (Ogilvy)  
Falstaff Beer (Ogilvy; Asher/Gould)  
Gallo (Ogilvy)  
Hamm's Beer (Asher/Gould)  
Mountain Dew (Ogilvy)  
M. LaMont Vineyards (Ogilvy)  
Old Crow Bourbon Whisky (Ogilvy)  
Olde English 800 Malt Liquor (Asher/Gould)  
Olympia Beer (Asher/Gould)  
Pabst Blue Ribbon Beer (Asher/Gould)  
Pearl Beer (Asher/Gould)  
Pepsi Light (Ogilvy)  
Private Stock Malt Liquor by Haffenreffer (Asher/Gould)  
Schaeffer Beer (Ogilvy)  
Sebastiani Vineyards (BBDO)

	Stolichnaya Vodka (Ogilvy)
	Van Gogh Vodka (Wong Doody)
	Vitel Mineral Water (BBDO)
<b>Corporate</b>	Autodesk (Wong Doody)
	Avery Dennison (Asher/Gould)
	Cessna Citation (Ogilvy)
	Church of Jesus Christ of Latter Day Saints (Initiative)
	City Investing (Ogilvy)
	Cooper Industries (Ogilvy)
	Dresser Industries (Ogilvy)
	IBM (Ogilvy)
	International Nickel (Ogilvy)
	International Paper (Ogilvy)
	Owens-Corning Fiberglas (Ogilvy)
	Rail LA (Silverman LLC)
	Sears (Ogilvy)
	Shell Oil Company (Ogilvy)
	Worldwide Church of God (BBDO)
<b>Consumer Electronics</b>	Alpine Electronics (Wong Doody)
	Fisher (BBDO)
	Panasonic (Ogilvy)
	Sanyo (Asher/Gould)
<b>Direct Response</b>	American Airlines (Bozell)
	American Express cards (Ogilvy)
	Associates Financial (Bozell)
	Bally's Health and Fitness (Initiative)
	Bryman College (Asher/Gould)
	HBO (Asher/Gould)
	Intercept Program (Asher/Gould)
	Jenny Craig (Initiative)
	Kaiser/Permanente (Initiative)
	Law Offices of Larry H. Parker (Asher/Gould; Silverman LLC)
	Mobile Dynamics (Wong Doody)
	National Education Centers (Asher/Gould)
	Nationwide PharmAssist (Silverman LLC)

	Paintrol Clinics (Asher/Gould)
	Southern California Cable Marketing Council (Asher/Gould)
	UCLA Athletics (Silverman LLC)
<b>Education</b>	<p>Bryman College (Asher/Gould)</p> <p>Mobile Dynamics (Wong Doody)</p> <p>National Education Centers (Asher/Gould)</p> <p>National University (Initiative)</p> <p>UCLA Anderson School of Management (Wong Doody)</p>
<b>Entertainment</b>	<p>Buena Vista Pictures (Initiative)</p> <p>Center Theatre Group/Ahmanson Theatre; Mark Taper Forum (Initiative)</p> <p>Circus World (Ogilvy)</p> <p>Disney Home Video (Initiative)</p> <p>Grand Ol' Opry (Ogilvy)</p> <p>HBO (BBDO and Asher/Gould)</p> <p>Houston Grand Opera (Ogilvy)</p> <p>Los Angeles Dodgers (Wong Doody)</p> <p>MGM Home Video (Wong Doody)</p> <p>MTV (Ogilvy)</p> <p>Nickelodeon (Ogilvy)</p> <p>Opryland USA (Ogilvy)</p> <p>Ringling Brothers Barnum &amp; Bailey Circus (Ogilvy)</p> <p>Six Flags (Ogilvy)</p> <p>Sony Pictures Digital Entertainment (Wong Doody)</p> <p>Southern California Cable Marketing Council (Asher/Gould)</p> <p>The Walt Disney Company (Initiative)</p> <p>Touchstone Pictures (Initiative)</p> <p>UCLA Athletics (Silverman LLC)</p> <p>UPN (Initiative)</p> <p>Walt Disney Pictures (Initiative)</p> <p>Warner Brothers (Initiative)</p> <p>World Poker Tour (Wong Doody)</p>
<b>Financial Services</b>	<p>Allied Bank of Texas (Bozell)</p> <p>American Express Credit Cards (Ogilvy)</p> <p>American Express Travelers Cheques (Ogilvy)</p> <p>American Express International Bank (Ogilvy)</p>

	American Savings Bank (Asher/Gould)
	Associates Financial (Bozell)
	Bowery Savings Bank (Ogilvy)
	E*Trade (Initiative)
	Gibraltar Savings & Loan of California (Ogilvy)
	Gibraltar Savings & Loan of Texas (Ogilvy)
	Merrill Lynch (Ogilvy)
	J. P. Morgan & Co. (Ogilvy)
	Nationwide Insurance (Ogilvy)
	Plastic Cash International (Wong Doody)
	Republic Bank of Texas (Bozell)
	Smith Barney (Ogilvy)
	SunAmerica (Asher/Gould)
	Union Bank of California (BBDO)
	U.S. Trust (Ogilvy)
	Valley National Bank – AZ (Bozell)
	Wei Dong Investment Holdings Ltd. (Silverman LLC)
<b>Gaming</b>	Augustine Casino (Wong Doody)
	Bellagio Hotel & Casino (Initiative)
	California Lottery (Initiative)
	Desert Inn Hotel & Casino (Asher/Gould)
	Las Vegas Convention and Visitor's Authority (Initiative)
	MGM Grand Hotel & Casino (Asher/Gould)
	Mirage Hotel & Casino (Initiative)
	New York New York Hotel & Casino (Asher/Gould)
	Treasure Island Hotel & Casino (Initiative)
<b>Grocery Products (includes. Packaged Goods)</b>	Armour Foods (Bozell)
	Balance Bar (Initiative)
	Beijing Zhong Gao International HR Co. Ltd. (Silverman LLC)
	California Avocados (Asher/Gould)
	California Eggs (Asher/Gould)
	Clif Bar (Wong Doody)
	Conagra Foods (Bozell)
	Gaines (Ogilvy)
	Dove Liquid (Ogilvy)
	Heath Bars (Bozell)

Hershey (Ogilvy)  
 Imperial Margarine (Ogilvy)  
 Luna Bar (Wong Doody)  
 Nabisco Double Stuf (Ogilvy)  
 Nabisco Krazy Glazy (Ogilvy)  
 Nabisco Saltine Crackers (Ogilvy)  
 Nabisco Sooper Kookies (Ogilvy)  
 Pace Picante Sauce (Bozell)  
 Pepperidge Farm (Ogilvy)  
 Post Alpha-Bits (Ogilvy)  
 Post Cocoa Pebbles (Ogilvy)  
 Post Fruity Pebbles (Ogilvy)  
 Purina dog chows (Ogilvy)  
 Post Super Sugar Crisp (Ogilvy)  
 Ralston-Purina cereals (Ogilvy)  
 Reese's Peanut Butter Cups (Ogilvy)  
 Quaker Oats (Bozell)  
 Swanson Frozen Dinners (Ogilvy)

#### **Health & Beauty Aids**

Avon Cosmetics (Ogilvy)  
 Contac (Ogilvy)  
 Dove Beauty Bar (Ogilvy)  
 Kinerase (Wong Doody)  
 Mary Kay Cosmetics (Bozell)  
 Mead-Johnson Enfamil (Ogilvy)  
 Mead-Johnson Metrecal (Ogilvy)  
 Pears Soap (Ogilvy)  
 Rembrandt Whitening Toothpaste (Wong Doody)  
 Twice as Nice shampoo (Ogilvy)

#### **Healthcare**

Century Aesthetics (Silverman LLC)  
 Century City Doctors Hospital (Silverman LLC)  
 Doctor Campbell Credit Dentists (Asher/Gould)  
 Geisinger Health System (Silverman LLC)  
 Intercept Program (Asher/Gould)  
 Kaiser Permanente (Initiative)  
 Modern Diagnostics (Silverman LLC)  
 Nationwide PharmAssist (Silverman LLC)

	Paintrol Clinics (Asher/Gould)
	Private Health Management (Silverman LLC)
	Salus Surgical Centers (Silverman LLC)
	UCLA Health System (Silverman LLC)
	United Health Plan (Asher/Gould)
<b>Hi-Tech</b>	<p>Apple Computers/International (BBDO)</p> <p>Autodesk (Wong Doody)</p> <p>Cadforce (Silverman LLC)</p> <p>Cisco (Initiative)</p> <p>Compaq (Ogilvy)</p> <p>Gateway (Initiative)</p> <p>IBM (Ogilvy)</p> <p>Intel (Initiative)</p> <p>Symantec (Bozell)</p>
<b>Industrial</b>	<p>Cessna (Ogilvy; Bozell)</p> <p>International Nickel (Ogilvy)</p> <p>International Paper (Ogilvy)</p> <p>Dresser Industries (Ogilvy)</p> <p>Falcon Waterfree (Silverman LLC)</p> <p>Owens-Corning Fiberglas (Ogilvy)</p> <p>Shell Farm Chemicals (Ogilvy)</p> <p>Shell Industrial Chemicals (Ogilvy)</p> <p>Shell Plastics and Resins (Ogilvy)</p> <p>Shell Synthetic Rubber (Ogilvy)</p>
<b>Internet</b>	<p>America On-Line (Initiative)</p> <p>E-Trade On-Line (Initiative)</p> <p>Event 411.com (Initiative)</p> <p>Petstore.com (Initiative)</p> <p>PlasticCash.com (Wong Doody)</p> <p>Yahoo! (Initiative)</p>
<b>Marketing Communications Agencies</b>	<p>Ayzenberg (Silverman LLC)</p> <p>Beijing Reach-All Investment Company Ltd. (Silverman LLC)</p> <p>BH Direct (Silverman LLC)</p> <p>Bright Strategic Design (Silverman LLC)</p> <p>Bullpen Integrated Marketing (Silverman LLC)</p>

	Eclipse Studio, Beijing (Silverman LLC)
	Glyphix (Silverman LLC)
	Horizon Media (Silverman LLC)
	M Creative Group (Silverman LLC)
	Nice Advertising (Silverman LLC)
	Radarworks (Silverman LLC)
	Rogers & Associates (Silverman LLC)
	Schiller LLC (Silverman LLC)
	U.S. International Media (Silverman LLC)
<b>Media/Publishing</b>	Frontiers Media LLC (Silverman LLC)
	HBO (BBDO and Asher/Gould)
	KCAL 9 Television, Los Angeles (Initiative)
	KCBS2 Television, Los Angeles (Initiative)
	MTV (Ogilvy)
	Nickelodeon (Ogilvy)
	Sirius XM (Silverman LLC)
	Southern California Cable Marketing Council (Asher/Gould)
	Triton Media (Silverman LLC)
	UPN (United Paramount Network) (Initiative)
<b>Miscellaneous Products</b>	Paragon Luggage (Wong Doody)
	Steuben Glass (Ogilvy)
	Zippo (Ogilvy)
<b>Office Products</b>	Avery Dennison (Asher/Gould)
	Intuit – QuickBooks (Wong Doody)
<b>Petroleum Products</b>	Arco (Initiative)
	Shell Fire & Ice Motor Oil (Ogilvy)
	Shell Gasoline (Ogilvy)
<b>Professional Services</b>	CFO911 (Silverman LLC)
	Law Offices of Larry H. Parker (Asher/Gould; Silverman LLC)
<b>Real Estate</b>	Coldwell Banker (BBDO)
	Esprit (Silverman LLC)
	Move.com (Silverman LLC)
	Pacifica Ventures (Silverman LLC)
	Relocation.com (Silverman LLC)

## **Restaurants**

Waterwood (Ogilvy)  
The Woodlands (Ogilvy)  
Acapulco (Asher/Gould)  
Baskin-Robbins (Ogilvy; Asher/Gould)  
Bennigan's (Bozell)  
Burger Chef (Ogilvy)  
Carl's Jr. (Initiative)  
Der Weinerschnitzel (Initiative)  
Godfather's Pizza (Bozell)  
Hardee's (Initiative)  
KFC (Initiative)  
Packard's Grill (Asher/Gould)  
Pioneer Chicken (Asher/Gould)  
Pizza Hut (Asher/Gould)  
Sizzler (BBDO)  
Steak & Ale (Bozell)  
Taco Bell (Initiative)  
Togo's (Initiative)  
Tom Sawyer's Old Fashioned Fried Chicken (Ogilvy)

## **Retail**

Aaron Brothers Art Marts (Asher/Gould)  
Albertson's Supermarkets (Initiative)  
AM/PM Mini Marts (Initiative)  
Arco (Initiative)  
Bailey Banks & Biddle Jewelers (Bozell)  
Big Lots (Initiative)  
C&R Clothiers (Asher/Gould)  
Checker Auto Parts (Bozell)  
Circle K (Initiative)  
Factory2You Stores (Asher/Gould)  
Family Bargain Center Stores (Asher/Gould)  
Harris & Frank Clothiers (Asher/Gould)  
Hughes Supermarkets (BBDO)  
Kennedy's Clothiers (Asher/Gould)  
Men's Wearhouse (Asher/Gould)  
Mervyn's (Wong Doody)  
Nordstrom (Wong Doody)

	Puppy Palace (Ogilvy)
	PIP Printers (BBDO)
	Ralphs Supermarkets (Initiative)
	Safeway Supermarkets (Initiative)
	Sears (Ogilvy)
	Sit 'n Sleep (Silverman LLC)
	Stater Brothers Supermarkets (Initiative)
	The Home Depot (Initiative)
	Tesco (Silverman LLC)
	Vons Supermarkets (Initiative)
	Wherehouse Records & Tapes (Asher/Gould)
	Zale Jewelers (Bozell)
<b>Social Marketing</b>	California Dept. of Boating and Waterways (Boating Safety) (Initiative)
	California Department of Health Services – BabyCal (Asher/Gould)
	California Department of Health Services – First5 (Asher/Gould)
	California Department of Health Services – HIV Prevention (Asher/Gould)
	California Department of Health Services – Tobacco-Use Prevention (Asher/Gould)
	Oregon Health Department – Tobacco-Use Prevention (Asher/Gould)
	United States Department of Commerce, Census 2000 (Initiative)
	United States Government; Centers for Disease Control – Tobacco-Use Prevention (Initiative)
	White House office of National Drug Control Policy – Drug-use Prevention (Initiative)
<b>Telecommunications</b>	Nextel (Initiative)
	Telcentris (Silverman LLC)
	Southwestern Bell (Bozell)
	VoxOx (Silverman LLC)
<b>Tobacco</b>	Tijuana Smalls (Ogilvy)
<b>Tires/Batteries/Accessories</b>	Arco (Initiative)
	Goodyear (Ogilvy)
	Shell (Ogilvy)
<b>Toys/Games</b>	Electronic Arts (Initiative)
	Mattel Electronics (Ogilvy)

## **Travel/Tourism**

Mattel Toys and Games (Ogilvy)  
Alaska Airlines (Wong Doody)  
Alaska Tourism (Initiative)  
ALM Royal Dutch Airlines (Ogilvy)  
American Airlines (Bozell; Initiative)  
American Express Travel Service (Ogilvy)  
Avis Rent-a-Car (Bozell)  
Bellagio Hotel & Casino  
British Tourist Authority (Ogilvy)  
Cunard Lines (Ogilvy)  
Desert Inn Hotel & Casino (Asher/Gould)  
Disneyland and Walt Disney World  
French Government Tourist Office (Ogilvy)  
Greyhound Lines (Bozell)  
Hyatt Regency Maui (Ogilvy)  
Hyatt Regency Waikiki (Ogilvy)  
KLM Royal Dutch Airlines (Ogilvy)  
Korean Airlines (Ogilvy)  
Las Vegas Convention & Visitors Bureau (Initiative)  
Loreto Bay (Wong Doody)  
Marriott (Ogilvy)  
MGM Grand Hotel & Casino (Asher/Gould)  
Mirage Hotel & Casino (Initiative)  
New York New York Hotel & Casino (Asher/Gould)  
Opryland USA (Ogilvy)  
Six Flags (Ogilvy)  
Trailways Bus Lines (Ogilvy)  
Treasure Island Hotel & Casino  
TWA (Ogilvy)  
United States Travel Authority (Ogilvy)  
Universal Studios Hollywood (Ogilvy)  
Yosemite National Park and the Curry Company (Ogilvy)

## **Utilities**

Houston Lighting & Power (Ogilvy)  
Nextel (Initiative)  
Salt River Project (Bozell)  
Southwestern Bell (Bozell)

### **EXPERT WITNESS EXPERIENCE**

1. I have been retained as an Expert Witness 66 times since the year 2000. (I have consulted on a number of other branding/trademark/marketing/advertising/media-related cases as well.)
2. I have prepared Expert Reports and/or Declarations 55 times.
3. I have been deposed as an Expert 31 times.
4. I have been qualified and have testified as an Expert in court/and or at arbitration hearings 16 times.
  - United States District Court, Tampa 2015
  - Arbitration Hearing, JAMS, San Francisco 2015
  - Circuit Court of Greene County, Missouri 2015
  - Arbitration Hearing, JAMS, Los Angeles 2015
  - Arbitration Hearing, JAMS, City of Orange, CA 2015
  - Arbitration Hearing, AAA, Los Angeles 2013
  - Arbitration Hearing, AAA, Bakersfield, CA 2012
  - United States District Court, Portland, OR 2012
  - Superior Court for the State of California, Los Angeles 2011
  - Arbitration Hearing, JAMS, Santa Monica, CA 2011
  - Arbitration Hearing, Los Angeles, 2009
  - Superior Court for the State of California, Santa Ana, CA 2009
  - Superior Court for the State of California, Norwalk, CA 2008
  - Copyright Royalty Judges of the Library of Congress, Washington, DC 2007
  - United States District Court, Los Angeles 2006
  - Superior Court for the State of California, Los Angeles 2003
  - Superior Court for the State of California, San Diego 2002
5. Approximately 30 percent of my professional time is spent as an “Expert Witness.”
6. Approximately 67 percent of my work has been for the plaintiff.
7. Approximately 33 percent of my work has been for the defendant.

**DEPOSITION, ARBITRATION AND/OR TRIAL TESTIMONY**

2011-2015

*CHRISTOPHER LEWERT et. al. v. BOIRON, INC. et. al.*  
United States District Court, Central District of California  
Case No. 2:11-cv-10803-SVW-SH  
Deposed 11/19/2015

*ONE HOUR AIR CONDITIONING FRANCHISING, L.L.C. v. DALLAS UNIQUE COMFORT, LTD.*  
United States District Court, Middle District of Florida, Tampa  
Case No. 8:13-cv-3278  
Deposed 6/18/2015; Testified 11/3/2015

*FAR NIENTE WINE ESTATES, LLC; FAR NIENTE WINERY, INC.; NICKEL & NICKEL VINEYARDS, LLC; FN CELLARS, LLC; FN LAND, LLC v. JEREMY J. NICKEL; AND THE VINEYARD HOUSE, LLC,*  
Judicial Arbitration and Mediation Services (JAMS), San Francisco  
Ref. No. 1100080365  
Testified 8/10/2015

*MERIDIAN CREATIVE ALLIANCE, LLC v. O'REILLY AUTOMOTIVE, INC.*  
In the Circuit Court of Greene County, Missouri  
Case No. 0931-CV08770  
Deposed 4/28/2015; Testified 6/11/2015

*INFORM VENTURES LLC v. TOYOTA MOTOR SALES U.S.A., INC.,*  
Judicial Arbitration and Mediation Services (JAMS)  
Arbitration No. 1220048952  
Deposed 5/8/2015; Testified 5/20/2015

*SCOTT EHREDT v. MEDIEVAL TIMES et. al.*  
Judicial Arbitration and Mediation Services (JAMS)  
Arbitration No. 1220047549  
Deposed 2/27/2015; Testified 3/10/2015

*VIP PRODUCTS, LLC, v. JACK DANIEL'S PROPERTIES, INC.; JACK DANIEL'S PROPERTIES, INC., COUNTERCLAIMANT v. VIP PRODUCTS, LLC., COUNTERDEFENDANT*  
United States District Court, District of Arizona  
Case No. 2:14-cv-02057-DGC  
Deposed 8/12/2015

J.R. MATS, INC. v. INTERNETSHOPSINC.COM d/b/a/ D.W. QUAIL GOLF  
United States District Court for the Eastern District of Pennsylvania  
Case No.: 2:14-cv-03427-TJS  
Deposed 4/1/2015

GLENNON MARRERO v. MICHAEL RAY NGUYEN-STEVENSON; UNIVERSAL MUSIC GROUP, INC.; TILLY'S, INC.; SHIEKH SHOES; AND DOE CORPORATION  
United States District Court, Central District of California, Western Division  
Case No. 13-Cv-09291-Cbm-Pjw  
Deposed 11/7/2014

POQUITO MAS LICENSING CORPORATION v. TACO BELL CORP  
United States District Court, Central District Of California  
Case No. 8:13-Cv-01933-Doc-Jpr  
Deposed 10/16/2014

PRIME MEDIA GROUP LLC v. ACER AMERICA CORPORATION  
United States District Court  
Northern District of California, San Jose Division  
Case No. 5:12-cv-05020-EJD  
Deposed 9/11/2014

BASIC RESEARCH, LLC v. JASPER PRODUCTS, LLC  
In the Third Judicial District Court in and for Salt Lake County, State of Utah  
Case No. 110903662  
Deposed 7/16/2014

ZENON KESIK v. NATIONAL TV SPOTS, INC.  
The Arbitration Tribunals of the American Arbitration Association  
AAA No. 72 147770 12 S1M  
Testified 11/25/2013

YU HSIANG M. ALEXANDER and CAROL A. WETTERLING-FOOS v. L'OREAL U.S.A. INC.  
Superior Court of the State of California, County of Los Angeles  
Case No: BC 431491  
Deposed 10/21/2013

IN THE MATTER OF ARBITRATION BETWEEN THE SUN PACIFIC GROUP, CLAIMANT AND THE PARAMOUNT GROUP, RESPONDENT AND COUNTERCLAIMANT  
The Arbitration Tribunals of the American Arbitration Association  
AAA No. 72 0180-Y-01187-11  
Testified 12/19/2012

FLIR SYSTEMS, INC. v. SIERRA MEDIA, INC. AND FLUKE CORPORATION

United States District Court, District Of Oregon, Portland Division

Case No. 3:10-cv-00971-HU

Deposed 4/18/2012; Testified 12/14/2012

IN RE: TOYOTA MOTOR CORP. UNINTENDED ACCELERATION MARKETING,  
SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION (Retained by Plaintiffs)

United States District Court Central District of California

Case No. 8:10ML2151 JVS (FMOx)

Deposed 8/24/2012 and 9/3/2012

SPORTING SUPPLIES INTERNATIONAL, INC. v. TULAMMO USA, INC., ET AL.

United States District Court, Central District of California at Santa Ana

Case No. SACV10-1338 AG (RNBx)

Deposed 6/13/2012

MARKETQUEST GROUP, INC., d/b/a All-In-One, v. BIC CORPORATION; BIC USA  
INC; and NORWOOD PROMOTIONAL PRODUCTS, LLC

United States District Court, Southern District of California

Case No. 11cv0618 Jls Wmc

Deposed 6/6/2012

PACIFIC BIOSCIENCE LABORATORIES, INC. v. NUTRA LUXE MD, LLC; and  
NUTRA BOTANICAL MD, INC.

United States District Court, Western District of Washington at Seattle

Case No. 2:10-cv-00230-JLR

Deposed 5/11/2012

IN RE: POM WONDERFUL LLC MARKETING AND SALES PRACTICES LITIGATION  
(Retained by Plaintiffs)

United States District Court, Central District of California

Master File No. 2:10-ml 2199-DDP (RZx) [MDL No. 2199]

Deposed 5/29/2012 and 8/23/2013

CONCEPT CHASER CO., INC. v. PENTEL OF AMERICA, ET AL.

Superior Court of the State of California, County of Los Angeles, Central District

Case No. BC429108

Deposed 9/19/2011; Testified 11/21/2011

SHANE MALEK; NHSI, INC.; and CELMATRIX, v. GR HAIR SOLUTIONS, LLC and  
GUTHY-RENKER CORPORATION

Judicial Arbitration and Mediation Services (JAMS)

Arbitration No. 1210028833

Deposed 10/25/2011; Testified 11/15/2011

ZOOEY DESCHANEL v. *STEVEN MADDEN LTD., STEVEN MADDEN RETAIL, INC.,  
ICONIX BRAND GROUP a/k/a CANDIES' INC., IP HOLDINGS, LLC, KOHL'S  
DEPARTMENT STORES ET AL*

Superior Court of the State of California for Los Angeles County

Case No. BC 451472

Deposed 10/19/2011

NEW HGE, INC. d/b/a HOUSTON GOLD EXCHANGE v. *JEWELRY BUYERS, INC.*

In the District Court Of Harris County, Texas, 333rd Judicial District

Cause No. 2009-78988

Deposed 2/22/2011 and 8/10/2011

## **EXPERT WITNESS EXPERIENCE**

(\*\* Indicates Active Case)

<b>RETAINED IN 2015</b>	<b>RETAINED BY:</b>	<b>ISSUE(S)</b>	<b>ACTIVITIES</b>
<b>REESE WITHERSPOON v. MARKETING ADVANTAGES INTERNATIONAL, INC., et al</b> Superior Court of the State of California, County of Los Angeles, West District Case No. SC120883	Defendant  Counsel: Leopold, Petrich & Smith Los Angeles Daniel M. Mayeda	Publicity rights	Submitted Expert Report (12/29/2015)
<b>**JOHN MARTIN KEARNEY, et. al. v. EQUILON ENTERPRISES, LLC, dba SHELL OIL PRODUCTS US</b> United States District Court District of Oregon, Portland Division Case No. 3:14-cv-00254-HZ	Defendant  Counsel: Greensfelder, Hemker & Gale St. Louis Daniel R. Garner	False and misleading advertising	Submitted Expert Report (12/30/2015)
<b>**Q PUBLISHING GROUP, LTD. v. OUTFRONT MEDIA INC.</b> In The United States District Court for the District of Colorado Civil Action No. 15-cv-00311-JLK	Defendant  Counsel: Kilpatrick Townsend & Stockton Denver Brian O'Donnell	Trademark infringement	Submitted Expert Report (7/30/2015)
<b>FAR NIENTE WINE ESTATES, LLC; FAR NIENTE WINERY, INC.; NICKEL &amp; NICKEL VINEYARDS, LLC; FN CELLARS, LLC; FN LAND, LLC v. JEREMY J. NICKEL; AND THE VINEYARD HOUSE, LLC,</b> JAMS, San Francisco Ref. No. 1100080365	Claimants  Counsel: Arnold & Porter San Francisco Jeremy Kamras	Trademark infringement	Submitted Expert Report (7/20/2015) Testified (8/11/2015)
<b>**VIP PRODUCTS, LLC, v. JACK DANIEL'S PROPERTIES, INC.; JACK DANIEL'S PROPERTIES, INC., COUNTERCLAIMANT v. VIP PRODUCTS, LLC., COUNTERDEFENDANT</b> United States District Court, District of Arizona Case No. 2:14-cv-02057-DGC	Plaintiff/Counter-defendant  Counsel: Dickinson Wright PLLC Phoenix David Bray	Trademark dilution by tarnishment	Submitted Expert Report (7/7/2015) Deposed (8/12/2015)

<b>INFORM VENTURES LLC v. TOYOTA MOTOR SALES U.S.A., INC.</b> JAMS, Los Angeles Arbitration No. 1220048952	Claimant  Counsel: Carlsmith Ball LLP Los Angeles Justin Goldstein	Advertising industry custom and practice re compensation	Deposed (5/8/2015) Testified (5/20/2015)
<b>**IN RE: FIRST AMERICAN HOME BUYERS PROTECTION CORPORATION CLASS ACTION LITIGATION</b> United States District Court, Southern District of California Lead Case No. 13-cv-01585 BAS (JLB)	Plaintiff  Counsel: Cotchett Pitre & McCarthy San Francisco Anne Marie Murphy	False and misleading advertising	Submitted Expert Report (3/25/2015)
<b>J.R. MATS, INC. v. INTERNETSHOPSINC.COM d/b/a/ D.W. QUAIL GOLF</b> United States District Court for the Eastern District of Pennsylvania Case No.: 2:14-cv-03427-TJS.	Defendant  Counsel: Petock & Petock, Valley Forge, PA Michael Petock	Trademark Infringement	Submitted Expert Report (3/5/2015) Deposed (4/1/2015)
<b>**RUDOLPH BONETATI v. MARIO MORAN</b> United States District Court Central District of California, Western Division Case No.: 2:14-cv-04287.	Plaintiff  Counsel: Bonetati, Kincaid & Soble Santa Ana, CA Matthew Arigo	Trademark Infringement	Submitted Expert Report (2/25/2015)
<b>MICHAEL D. FRIEDMAN, et. al. v. OLD REPUBLIC HOME PROTECTION COMPANY, INC.</b> United States District Court, Central District of California Case No. EDCV 12-1833 AG (OPx).	Plaintiff  Counsel: Cotchett Pitre & McCarthy San Francisco Anne Marie Murphy	False and misleading advertising	Submitted Expert Report (2/11/2015)
<b>SCOTT EHREDT v. MEDIEVAL TIMES et. al.</b> JAMS, Irvine CA Case No. 1220047549. Originally filed in Superior Court of California, County of Los Angeles	Claimant  Counsel: The Hamideh Firm Los Angeles Bassil Hamideh	Publicity rights	Submitted Expert Report (2/9/2015) Deposed 2/27/2015 Testified (3/10/2015)

RETAINED IN 2014	RETAINED BY:	ISSUE(S):	ACTIVITIES:
<b>ONE HOUR AIR CONDITIONING FRANCHISING LLC v. DALLAS UNIQUE INDOOR COMFORT, LTD.</b> United States District Court, Middle District of Florida, Tampa Case No.: 8:13-cv-3278.	Plaintiff  Co-Counsel: Frost Brown Todd, Louisville, KY D. Christopher Robinson and Shutts & Bowen LLP Orlando, FL John Dannecker	Trademark infringement	Submitted Expert Report (1/20/2015) Deposed (6/18/2015) Testified (11/3/2015)
<b>OROLOGIO OF SHORT HILLS, INC. and OROLOGIO INTERNATIONAL LTD., INC. v. THE SWATCH GROUP (U.S.) INC.</b> United States District Court for the District of New Jersey Case No. 2:11-cv-06854-SDW-MCA	Defendant  Counsel: Wuersch & Gering, New York, NY Samuel Levy	Advertising industry custom and practice re co-op advertising	Submitted Rebuttal Expert Report (11/8/2014)
<b>GLENNON MARRERO v. MICHAEL RAY NGUYEN-STEVENSON; UNIVERSAL MUSIC GROUP, INC.; TILLY'S, INC.; SHIEKH SHOES; AND DOE CORPORATION</b> United States District Court Central District of California Western Division Case No. 13-Cv-09291-Cbm-Pjw	Defendant  Counsel: Krongold Law Group Irvine, CA Steve Krongold	Advertising industry custom and practice re logo designs	Submitted Expert Report (10/29/2014) Submitted Rebuttal Report (11/2/2014) Deposed (11/7/2014)
<b>POQUITO MAS LICENSING CORPORATION v. TACO BELL CORP</b> United States District Court, Central District Of California Case No. 8:13-Cv-01933-Doc-Jpr	Plaintiff  Counsel: Blakely Law Group, Manhattan Beach, CA Brent Blakely	Trademark infringement	Submitted Expert Report (10/10/2014); Deposed (10/16/2014)
<b>THE CLEARLY FOOD &amp; BEVERAGE CO., INC. v. TOP SHELF BEVERAGES, INC</b> United States District Court, The Western District of Washington Case No. 2:13-cv-01763-JLR	Defendant  Counsel: Law Offices Of Nate Kelly, Beverly Hills, CA Nate Kelly	Trademark infringement	Submitted Expert Report (10/3/2014)
<b>** CHRISTOPHER LEWERT et. al. v. BOIRON, INC. et. al.</b> (Successor to Jovel v. Boiron) United States District Court, Central District of California Case No. 2:11-cv-10803-SVW-SH	Defendant  Counsel: Orrick, Herrington & Sutcliffe, Los Angeles Elliot Henry	False and misleading advertising	Submitted Supplemental Expert Report (7/14/2014)

<b>** SARCO CREEK RANCH AND WILLIAM PARMLEY v. MILTON GREESON AND SARCO CREEK LAND &amp; CATTLE COMPANY.</b> U.S. District Court for the Southern District of Texas (Victoria) Case #: 6:14-cv-00013	Plaintiff  Counsel: Law Offices of Delphine James, Houston, TX Delphine James	Trademark infringement	Submitted Expert Report (5/19/2014)
<b>** BASIC RESEARCH, LLC v. JASPER PRODUCTS, LLC</b> In the Third Judicial District Court in and for Salt Lake County, State of Utah Case No. 110903662	Plaintiff  Counsel: Price Parkinson & Kerr, Salt Lake City, UT Mark Williams	Consumer purchasing behavior	Submitted Expert Report (5/12/2014); Deposed (7/16/2014)
<b>NICHOLAS HUFFMAN v. EBAY, INC., et al.</b> Superior Court of the State of California, County of San Francisco Case No. CGC-13-528208.	Plaintiff  Counsel: Gearinger Law Group, San Francisco, CA Brian Gearinger	Publicity rights	Submitted Expert Report (1/9/2014)
<b>GRUPO GALLEGOS v. LA CURACAO; CURACAO, LTD; ADIR INTERNATIONAL, LLC</b> Superior Court of the State of California, County of Los Angeles Case No. BC496768.	Defendant  Direct: Curacao LTD, Los Angeles, CA Mauricio Fux, General Counsel	Advertising industry custom and practice re agency compensation	Settled prior to deposition

RETAINED IN 2013	RETAINED BY:	ISSUE(S):	ACTIVITIES:
<b>DOUGLAS HENDRICKS, MD v. PHYSICIANS SKIN &amp; WEIGHT CENTERS, INC.</b> United States District Court for the Central District of California Case No. SACV 12-02169 (RNBx).	Defendant  Counsel: Veatch Carlson, Los Angeles, CA S. Martin Keleti	Copyright infringement; false and misleading advertising	Submitted Expert Report (1/2/2014)
<b>MERIDIAN CREATIVE ALLIANCE, LLC v. O'REILLY AUTOMOTIVE, INC.</b> In the Circuit Court of Greene County, Missouri Case No. 0931-CV08770	Defendant  Counsel: Spencer Fane Britt & Browne Springfield, MO Charles Cowherd	Advertising industry custom and practice re media billing and agency compensation	Submitted Expert Report (4/3/2015) Deposed (4/28/2015) Testified (6/11/2015)

<b>PRIME MEDIA GROUP LLC v. ACER AMERICA CORPORATION</b> United States District Court Northern District of California, San Jose Division Case No. 5:12-cv-05020-EJD	Plaintiff  Counsel: Nixon Peabody, Chicago, IL Kevin P. Shea	Advertising industry custom and practice re media billing and agency compensation	Submitted Expert Report (5/30/2014); Submitted Expert Rebuttal Report (8/18/2014); Deposed (9/11/2014)
<b>LEONIDAS JOVEL, et. al. v. BOIRON, INC. et. al.</b> United States District Court, Central District of California Case No. 2:11-cv-10803-SVW-SH.	Defendant  Counsel: Orrick, Herrington & Sutcliffe, Los Angeles, CA Elliot Henry	False and misleading advertising	Submitted Expert Report (11/27/2013); class not certified; refiled with updated named plaintiff (see "Lewart")
<b>YU HSIANG M. ALEXANDER and CAROL A. WETTERLING-FOOS v. L'OREAL U.S.A. INC.</b> Superior Court of the State of California, County of Los Angeles Case No: BC 431491.	Plaintiff  Counsel: Khorrami Boucher Sumner Sanguinetti, Los Angeles, CA Robert J. Drexler	False and misleading advertising	Submitted Expert Report (11/24/2013); Deposed (10/21/2013)
<b>ZENON KESIK v. NATIONAL TV SPOTS, INC.</b> The Arbitration Tribunals of the American Arbitration Association AAA No. 72 147770 12 S1M.	Claimant  Retained by Claimant Zenon Kesik	Advertising industry custom and practice re motion picture advertising	Testified at Arbitration (11/25/2013)
<b>LELAND S. SAYLOR v. SAYLOR PUBLICATIONS, INC., SIERRA WEST LLC; AND MARY WALLERS</b> United States District Court, Central District of California Case No. CV12-7268 MWF (CWx).	Plaintiff  Counsel: Royce Law Firm, East Lansing, MI Christopher R. Royce	Trademark infringement	Submitted Expert Report (11/9/2013)
<b>MEGACOMFORT, INC. v. IMPACTO PROTECTIVE PRODUCTS, INC.</b> United States District Court, Central District of California, Southern Division Case No: SACV 13 - 00952 JST (AJWx).	Plaintiff  Counsel: Royce Law Firm, East Lansing, MI Christopher R. Royce	Trademark infringement	Submitted Expert Report (11/5/2013)

<b>OTR MEDIA GROUP INC. APPEAL TO CITY OF NEW YORK, BOARD OF STANDARDS AND APPEALS</b> In Re: 945 Zerega Avenue, Block 3700 Lot 31, Bronx, New York, Calendar No. 67-13-A; 330 Bruckner Boulevard, Block 2599, Lot 165, Bronx, New York, Cal. No. 68-13-A; 945 Zerega Avenue, Block 3700, Lot 31, Bronx, New York, Cal. No. 67-13-A; 174 Canal Street, Block 201, Lot 14, Manhattan, New York, Cal. No. 87-13-A; 25 Skillman Avenue, Block 2746, Lot 45, Brooklyn, New York, Cal. No. 69-13-A	Appellant  Counsel: Bryan Cave, New York, NY Phyllis Arnold	Advertising industry custom and practice re billboard advertising	Submitted (4) Affidavits (5/31/2013)
<b>BARRY CUTLER v. LANI STARK, ET AL.</b> Circuit Court of the Second Circuit, State of Hawai'i Civil Case No. 2CC1210798.	Plaintiff  Retained by Plaintiff Barry Cutler	Publicity rights; advertising industry custom and practice re syndicated television	Submitted Expert Report (5/1/2013)
<b>NORDSTROM, INC. and NIHC, Inc. v. 752419 CANADA INC. d/b/a BEYOND THE RACK; BEYOND THE RACK ENTERPRISES, INC., and BEYOND THE RACK USA INC.</b> United States District Court, Western District of Washington at Seattle Case No. 2:12-cv-01387-TSZ	Plaintiff  Counsel: Baker Williams Matthiesen, Houston, TX Sarah Silbert	Trademark infringement	Submitted Expert Report (3/21/2013)
<b>GENERAL CHARLES E. "CHUCK" YEAGER (RET.) and PMN II, LLC v. FORT KNOX SECURITY PRODUCTS</b> United States District Court for the District of Utah Case No: 11-cv-00091-TS	Plaintiff  Counsel: AlderLaw, Los Angeles, CA Michael Alder	Publicity rights	Submitted Expert Report (3/20/2013)
<b>RESON A/S, and RESON, INC. v. R2SONIC, LLC et al.</b> Superior Court for the State of California, County of Santa Barbara, Anacapa Division Case No. 1342087	Plaintiff  Counsel: Price, Postel & Parma, Santa Barbara, CA Christopher E. Haskell	Trademark infringement	Settled prior to deposition
<b>ZEST IP HOLDINGS, LLC and ZEST ANCHORS, LLC v. IMPLANT DIRECT MFG. LLC, IMPLANT DIRECT LLC, and IMPLANT DIRECT INT'L</b> United States District Court for the Southern District of California Case No. 3:10-cv-00541-LAB-WVG	Defendant  Retained by Hampton IP & Economic Consultants, Centerville, UT Scott Hampton	False and misleading advertising	Submitted Expert Report (2/27/2013)

RETAINED IN 2012	RETAINED BY:	ISSUE(S):	ACTIVITIES:
<b>DOMINION ENTERPRISES and HOMES.COM v. LINKUSYSTEMS, INC. and NICK DURMENT</b> United States District Court Central District of California, Southern Division Case Number 8:11-cv-01852-DOC-AN	Defendant  Counsel: Veatch Carlson Los Angeles Keith G. Wileman	False and misleading advertising	Submitted Expert Report (1/2/2013)
<b>IN THE MATTER OF ARBITRATION BETWEEN THE SUN PACIFIC GROUP, CLAIMANT AND THE PARAMOUNT GROUP, RESPONDENT AND COUNTERCLAIMANT</b> American Arbitration Association – Commercial Arbitration Tribunal Case Number 720180-Y-01187-11	Claimant  Counsel: Damrell, Nelson, Schrimp, Pallios, Pacher & Silva, Modesto CA Kathy L. Monday	Advertising industry custom and practice re media planning	Testified (12/19/2012)
<b>IN RE: TOYOTA MOTOR CORP. UNINTENDED ACCELERATION MARKETING, SALES PRACTICES, AND PRODUCTS LIABILITY LITIGATION</b> United States District Court Central District of California Case No. 8:10ML2151 JVS (FMOx)	Plaintiffs  Counsel: Susman Godfrey LLP, Houston, TX Robert Safi	False and misleading advertising	Submitted Expert Report (7/20/2012). Submitted Rebuttal Expert Report (9/17/2012); Deposed (8/24/2012 and 9/3/2012)
<b>MARKETQUEST GROUP, INC., d/b/a All-In-One, v. BIC CORPORATION; BIC USA INC; and NORWOOD PROMOTIONAL PRODUCTS, LLC</b> United States District Court, Southern District of California Case No. 11cv0618 Jls Wmc	Defendant  Counsel: Gordon & Rees, San Diego, CA Richard Sybert	Trademark infringement	Submitted Expert Rebuttal Report (5/10/2012); Deposed (6/6/2012); Revised Rebuttal Report (10/6/2014)
<b>SPORTING SUPPLIES INTERNATIONAL, INC. v. TULAMMO USA, INC., ET AL.</b> United States District Court, Central District of California at Santa Ana Case No. SACV10-1338 AG (RNBx)	Plaintiff  Counsel: McQueen & Ashman, Irvine, CA Joshua Schaul	Trademark and trade dress infringement	Submitted Expert Report (4/12/2012); Deposed (6/13/2012)

<b>PACIFIC BIOSCIENCE LABORATORIES, INC. v. NUTRA LUXE MD, LLC; and NUTRA BOTANICAL MD, INC.</b> United States District Court, Western District of Washington at Seattle Case No. 2:10-cv-00230-JLR	Defendant  Counsel: Weiss & Moy, Scottsdale, AZ Ken Motolenich-Salas	False and misleading advertising	Submitted Expert Report (3/12/2012); Deposed (5/11/2012)
<b>** IN RE: POM WONDERFUL LLC MARKETING AND SALES PRACTICES LITIGATION</b> United States District Court, Central District of California Master File No. 2:10-ml 2199-DDP (RZx) [MDL No. 2199]	Plaintiffs  Counsel: Kirtland & Packard, El Segundo, CA Behram V. Parekh	False and misleading advertising	Submitted Expert Reports (3/13/2012 and 5/30/2013); Deposed (5/29/2012 and 8/23/2013)
<b>FLIR SYSTEMS, INC. v. SIERRA MEDIA, INC. AND FLUKE CORPORATION</b> United States District Court, District Of Oregon, Portland Division Case No. 3:10-cv-00971-HU	Plaintiff  Counsel: Bickel & Brewer, Dallas, TX Robert M. Millimet	Trademark infringement; false and misleading advertising	Submitted Expert Report (3/13/2012). Deposed (4/18/2012); Testified (12/14/2012)

RETAINED IN 2011	RETAINED BY:	ISSUE(S):	ACTIVITIES:
<b>ZOOEY DESCHANEL v. STEVEN MADDEN LTD., STEVEN MADDEN RETAIL, INC., ICONIX BRAND GROUP a/k/a CANDIES' INC., IP HOLDINGS, LLC, KOHL'S DEPARTMENT STORES ET AL</b> Superior Court of the State of California for Los Angeles County Case No. BC 451472	Plaintiff  Counsel: Joseph D. Schleimer, Beverly Hills, CA	Publicity rights	Submitted Declaration (9/2/2011); Deposed (10/19/2011)
<b>SHANE MALEK; NHSI, INC.; and CELMATRIX, v. GR HAIR SOLUTIONS, LLC and GUTHY-RENKER CORPORATION</b> JAMS Arbitration No. 1210028833	Claimant  Counsel: Murphy Rosen Meylan & Davitt, Santa Monica, CA David E. Rosen	Advertising industry custom and practice re direct marketing	Submitted Expert Report (10/20/2011); Deposed (10/25/2011); Testified (11/15/2011)
<b>CONCEPT CHASER CO., INC. v. PENTEL OF AMERICA, ET AL.</b> Superior Court of the State of California, County of Los Angeles, Central District Case No. BC429108	Plaintiff  Counsel: Alderlaw, Los Angeles, CA Michael Alder	Advertising industry custom and practice re agency compensation	Deposed (9/19/2011); Testified (11/21/2011)

<b>MARTIN A. VANDERHOEVEN v. NEWPORT DUNES MARINA LLC ET AL.</b> Superior Court of the State of California, County of Orange Case No. 30-2009-00292882	Defendant  Counsel: Osman & Associates, Glendale, CA Michael J. Zuckerman	Advertising industry custom and practice re direct marketing	Settled prior to deposition
<b>NEW HGE, INC. d/b/a HOUSTON GOLD EXCHANGE v. JEWELRY BUYERS, INC.</b> In the District Court Of Harris County, Texas, 333rd Judicial District Cause No. 2009-78988	Plaintiff  Co-Counsel: Andrew Piekalkiewicz and John C. LaGrappe Houston, TX	Trademark infringement	Deposed (2/22/2011; 8/10/2011)

RETAINED IN 2010	RETAINED BY:	ISSUE(S):	ACTIVITIES:
<b>JESSICA ANN COLLINS v. 4 LIFE WEIGHT LOSS CENTERS, INC.</b> In the Circuit Court of Jackson County, Missouri at Kansas City, MO Case No. 0916-CV17572 Division 4	Plaintiff  Counsel: Davis, Ketchmark & McCreight, Kansas City, MO Brian Ivers	False and misleading advertising	Deposed (5/14/2010)
<b>CAROL W. ROWE v. LIFESTYLE LIFT HOLDING, INC., ET AL.</b> In the Court of Common Pleas, Cuyahoga County, Ohio Case No. CV-08-672025	Plaintiff  Counsel: Petersen & Petersen, Chardon OH Susan Petersen	False and misleading advertising	Submitted Expert Report (1/14/2010)

RETAINED IN 2009	RETAINED BY:	ISSUE(S):	ACTIVITIES:
<b>STATE OF CALIFORNIA v. MATTHEW PARKER</b> Superior Court of the State of California for the County of Los Angeles Felony Complaint LA061984	Defendant  Counsel: Law Offices Of Allison B. Margolin, Beverly Hills, CA Allison Margolin	False and misleading advertising	Submitted Expert Report (12/2/2009)
<b>PAUL W. HERBERT, AN INDIVIDUAL v. DONALD K. DAVIES ET AL</b> ADR Services Case #09-5576-ABH	Claimant  Counsel: Krane & Smith, Encino, CA Stephanie Lewis	Advertising custom and practice re direct marketing	Deposed (5/29/2009); Testified (12/30/2009)
<b>THE STOCKROOM, INC., v. XR, LLC AND ARI H. SUSS</b> United States District Court, Central District of California, Southern Division Case No. SACV08-01046 JVS (RNBx)	Defendant  Counsel: Royce Law Firm East Lansing, MI Christopher R. Royce	Copyright infringement	Submitted Expert Reports (8/23/2009 and 9/25/2009)

<b>BROWN v. CHEGINI (CALIFORNIA LAWYERS GROUP, LLP v. CALIFORNIA LAWYERS GROUP, INC.)</b> Superior Court of the State of California for the County of Orange Case No. 07CC10325	Plaintiff  Counsel: Scapa Law Group Woodland Hills, CA Robert Scapa	Trademark infringement	Submitted Declaration (6/29/2009); Deposed (2/25/2009); Testified (6/24/2009)
<b>PEOPLE OF THE STATE OF CALIFORNIA v. ULISES GUTIERREZ</b> Superior Court of the State of California for the County of Los Angeles Felony Complaint A085949	Defendant  Counsel: Wallin & Klarich West Covina, CA Daniel V. Cota	False and misleading advertising; trademark infringement	Settled prior to trial.

RETAINED IN 2008	RETAINED BY:	ISSUE(S):	ACTIVITIES:
<b>IN RE THE MARRIAGE OF ISABELLE SUISSA, PETITIONER AND DAVID SUISSA, RESPONDENT</b> Superior Court of the State of California for the County of Los Angeles, Central District Case No. BD 379-422	Respondent  Counsel: Kolody Anteau, Beverly Hills, CA Michael Kretzmer	Advertising industry custom and practice re responsibilities of agency managers	Deposed (10/13/2008)
<b>REGENCY OUTDOOR ADVERTISING, INC. v. CHRYSLER REALTY COMPANY, LLC</b> Superior Court of the State of California for the County of Los Angeles Case No. BC 366735	Defendant  Counsel: Howard & Howard, Las Vegas, NV Robert Rosenthal	Media property valuation	Deposed (1/4/2008)
<b>REGIONAL ADVERTISING COOPERATIVE OF SOUTHERN CALIFORNIA, INC. v. FAROKH POUR, aka TONY POUR; LUBZ, INC.; AND SAZACH, LLC</b> Superior Court of the State of California for the County of Los Angeles, Southeast District Case No. VC041966	Plaintiff  Counsel: Tredway, Lumsdaine & Doyle, Downey, CA Roy J. Jimenez	Advertising industry custom and practice re media	Deposed (5/27/2008); Testified (June, 2008)

RETAINED IN 2007	RETAINED BY::	ISSUE(S):	ACTIVITIES:
<b>FLOTSAM OF CALIFORNIA, INC., DBA NORLAND'S ON THE WHARF AND SHORELINE SURF SHOP v. HUNTINGTON BEACH CONFERENCE AND VISITORS BUREAU</b> U.S. District Court, Northern District of California, San Francisco Division Case No. C 06-07028 MMC	Defendant  Counsel: Gordon & Rees, Los Angeles Craig Mariam	Trademark infringement	Submitted Expert Report (11/8/2007)
<b>ADJUSTMENT OF RATES AND TERMS FOR PREEXISTING SUBSCRIPTION SERVICES AND SATELLITE DIGITAL AUDIO RADIO SERVICES</b> Before the Copyright Royalty Judges, Library of Congress, Washington, D.C. Docket No. 2006-1 CRB DSTR	Satellite Digital Audio Radio Services (Sirius and XM)  Co-Counsel: Wiley Rein, Washington DC Karen Ablin and Weil, Gotshal & Manges, New York, NY Jonathon Bloom	Marketing value of publicity	Submitted Written Expert Testimony (7/27/2007); Testified (8/2007)
<b>ACKERMAN MCQUEEN INC. v. THE B EQUAL COMPANY AND THE EDUGAMING CORPORATION</b> United States District Court, Western District of Oklahoma Case No. CV-05-01365	Defendant  Counsel: Monnet, Hayes, Bullis, Thompson & Edwards, Oklahoma City, OK Robert C. Smith, Jr.	Advertising industry custom and practice re agency compensation	Submitted Written Expert Declaration (6/10/2007); Deposed (July, 2007)
<b>PRO CLUB v. PRO 5 ET AL.</b> United States District Court, Central District of California Case No. CV-06-4846 (SJO) FMOx	Plaintiff  Counsel: Marh & Associates, Los Angeles Martin E. Stearn	Trademark and trade dress infringement	Case dismissed by court

RETAINED IN 2006	RETAINED BY:	ISSUE(S):	ACTIVITIES:
<b>DEPARTMENT OF PARKS AND RECREATION v. STEPHEN HARPER, AN INDIVIDUAL AND MALILBU PIER COMPANY, LLC</b> United States District Court, Central District of California Case No. 2:05-CV-02008-DSF-JWJ	Plaintiff  Counsel: Gordon & Rees, San Diego, CA Richard Sybert	Trademark infringement	Submitted Expert Report (2/28/2006); Testified (8/3/2006)

RETAINED IN 2003	DESIGNATED BY:	ISSUE(S):	ACTIVITIES:
<b>KRAK TV, INC., et al v. WESTERN INTERNATIONAL MEDIA, ET AL.</b> Superior Court of the State of California for the County of Los Angeles Case No. BC207676	Defendant  Retained by Defendant Initiative Media, Los Angeles, CA Daniel Karnowsky, Chief Counsel	Advertising industry custom and practice re sequential liability	Testified (June, 2003)

RETAINED IN 2002	RETAINED BY:	ISSUE(S):	ACTIVITIES:
<b>PEOPLE OF THE STATE OF CALIFORNIA ex rel. BILL LOCKYER, ATTORNEY GENERAL OF THE STATE OF CALIFORNIA v. R.J. REYNOLDS TOBACCO CO.</b> Superior Court of the State of California for the County of San Diego Case No. GIC764118	Plaintiff  Counsel: State of California – Office of the Attorney General, Sacramento, CA Karen Leaf	False and misleading advertising	Deposed (2002); Testified (2002)

RETAINED IN 2000	RETAINED BY:	ISSUE(S):	ACTIVITIES:
<b>PEOPLE OF THE STATE OF CALIFORNIA, ET AL. v. BROWN &amp; WILLIAMSON TOBACCO CORP., ET AL AND PHILIP MORRIS INC., ET AL. (“TOBACCO CASES II”)</b> Superior Court of the State of California for the County of San Diego Case No. 996781	Plaintiffs  Counsel: Thorsnes Bartolotta & McGuire, San Diego, CA R. Christian Hulbert	False and misleading advertising	Deposed (7/2/2000)

# EXHIBIT 3

## Sean Garrison

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**From:** Sean Garrison  
**Sent:** Tuesday, March 15, 2016 12:48 PM  
**To:** [steve@legendslaw.com](mailto:steve@legendslaw.com)  
**Cc:** Glenn Bacal  
**Subject:** 4Life v. Senuvo Opposition - Discovery Issues 53287-5189

Steve,

Thank you for taking my call today. I hope you get over your cold and feel better soon. As discussed, I look forward to hearing back from you within the week regarding your client's documents and when we can expect to receive them.

Regarding the depositions, I will touch base with you once we have your client's documents so that we can schedule depositions on a mutually convenient date. It appears we will need a brief extension of the discovery deadline in order to get all discovery completed (perhaps 30 days), and I will get back to you with a stipulation for that.

We are working on our discovery responses, and I will let you know later this week if we believe we will need an extension on those, which are currently due on Monday the 21<sup>st</sup>.

Finally, let me reiterate that the rules require that you notify the Board of your intent to use an expert witness and that your expert prepare and provide us with an expert report. These are part of your expert disclosure obligations with which you must comply if you intend to submit expert testimony. Otherwise, your expert will not be permitted to testify in this matter.

I look forward to hearing from you soon.

Sean D. Garrison  
**Bacal Andersen & Garrison Law Group**  
6991 East Camelback Suite D-102  
Scottsdale AZ 85251

Email: [sean.garrison@bacalgroup.com](mailto:sean.garrison@bacalgroup.com)  
Direct: 480-719-8501  
Cell: 480-206-3210

Check Out Our New Website: [www.ipdepartment.com](http://www.ipdepartment.com)  
New Articles and Latest News About our Firm

# **EXHIBIT 4**

## Sean Garrison

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**From:** Stephen H. Bean <steve@legendslaw.com>  
**Sent:** Thursday, March 24, 2016 7:53 AM  
**To:** Sean Garrison  
**Subject:** Re: 4Life Trademarks v. Senuvo - Discovery Extension 53287-5189  
**Attachments:** signature.asc

Sean,

Yes, you can answer our discovery requests on April 4. Also, it looks like we will need to the same date to finalize our document production.

I have a lot of things happening in multiple cases over the next several weeks. Would you be agreeable to moving all dates forward another 30 days in your proposed stip?

Please let me know.

Thanks,

Steve

Steve Bean, Esq.  
Legends Law Group, PLLC

On Mar 23, 2016, at 5:42 PM, Sean Garrison <[Sean.Garrison@bacalgroup.com](mailto:Sean.Garrison@bacalgroup.com)> wrote:

Steve,

That date automatically re-calculates on the online form when the discovery cutoff is extended. Here is a hard copy stip instead of the TTAB online form, omitting that reference. Okay, now?

Can you also please confirm the extension on our discovery responses to April 4? Thanks.

Sean D. Garrison  
**Bacal Andersen & Garrison Law Group**  
DD: 480-719-8501

Check Out Our New Website: [www.ipdepartment.com](http://www.ipdepartment.com)  
New Articles and Latest News About our Firm

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**From:** Stephen H. Bean [<mailto:steve@legendslaw.com>]  
**Sent:** Wednesday, March 23, 2016 3:53 PM  
**To:** Sean Garrison  
**Subject:** Re: 4Life Trademarks v. Senuvo - Discovery Extension 53287-5189

Sean,

# EXHIBIT 5

## Sean Garrison

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**From:** Sean Garrison  
**Sent:** Monday, April 11, 2016 5:55 PM  
**To:** steve@legendslaw.com; andra@legendslaw.com  
**Cc:** Jamie Tuccio; Glenn Bacal  
**Subject:** Discovery Status and Responses; Protective Order 53287-5189  
**Attachments:** 4Life's Responses to Request for Production from Senuvo (4-11-16).pdf; 4Life's REDACTED Response to First Set of Interrogatories from Senuvo (4-11-16).pdf; Agreed Protective Order.Docx

Steve,

Attached to this e-mail for service are:

- (1) 4Life's Response to First Set of Interrogatories (REDACTED)
- (2) 4Life's Response to Request for Production

Also attached for review and execution is an agreed protective order. This order is the standard order from the TTAB website, modified to include an acknowledgment form at the end and to address electronic filing of protected information via ESTTA (Section 12). Please let me know if you have any questions. Upon execution of the order by you and your client, we will countersign, file it with the Board and provide you with a copy of the fully unredacted version of our interrogatory responses.

With regard to your client's discovery obligations, despite the extension we previously granted to April 4, we have still not received your client's documents that were originally due on March 4. We need to get these documents ASAP to begin our review and preparation for depositions of your client before the discovery deadline. Your client has now had over 2 months to gather and produce its responsive documents. That is more than enough time; please get them to us by no later than Wednesday of this week.

Also, the TTABVue docket indicates that you have still not alerted the Board to your intention to use an expert witness, nor have you provided us with the required expert report. Please let me know whether you intend to use an expert witness in this case or not. If not, please provide us with a formal, written notice withdrawing the expert disclosure previously served.

Thank you.

Sean D. Garrison  
**Bacal Andersen & Garrison Law Group**  
6991 East Camelback Suite D-102  
Scottsdale AZ 85251

Email: [sean.garrison@bacalgroup.com](mailto:sean.garrison@bacalgroup.com)  
Direct: 480-719-8501  
Cell: 480-206-3210

Check Out Our New Website: [www.ipdepartment.com](http://www.ipdepartment.com)  
New Articles and Latest News About our Firm

## Sean Garrison

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**From:** Sean Garrison  
**Sent:** Thursday, April 14, 2016 2:16 PM  
**To:** steve@legendslaw.com; andra@legendslaw.com  
**Cc:** Glenn Bacal; Jamie Tuccio  
**Subject:** Senuvo's Document Production 53287-5189

Steve,

I understand you may have a busy schedule, but we have received none of your client's documents in responses to our discovery requests and no reply to my e-mail from Monday. Will your client be producing its document this week?

Sean D. Garrison  
**Bacal Andersen & Garrison Law Group**  
DD: 480-719-8501

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6991 East Camelback  
Suite D-102  
Scottsdale, AZ 85251

April 20, 2016

Via E-mail

Stephen H. Bean  
Legends Law Group, PLLC  
330 N Main  
Kaysville, UT 84037

Re: 4Life Trademarks v. Senuvo; Meet and Confer for Senuvo's discovery responses and expert disclosures; Our file: 53287-5189

Dear Steve:

I am writing in furtherance of my obligation to meet and confer with you regarding your client's discovery responses and expert disclosures.

#### Senuvo Documents

I have still not received any reply to my e-mails from April 11 and April 14 inquiring about your client's documents. The documents were originally due on March 4, and at your request, I granted you an extension until April 4 to get them produced to us. You then failed to produce any documents, and you have ignored my follow up emails. As you know, we need production of your client's documents before we can even schedule the discovery depositions in this case. Given your lack of response to my inquiries about document production, we are forced to file a motion to compel production of the documents, and will do so if we have not received the documents that have been requested by Friday, April 22.

#### Interrogatory Responses

We have also reviewed Senuvo's interrogatory responses and have found a number of them to be deficient, as well. I address each in turn:

Interrogatory No. 4: This interrogatory asks for "the dates during which Your Products have been made available for sale" on each of the websites identified in your answer to Interrogatory

Sean D. Garrison |  
[Sean.Garrison@bacalgroup.com](mailto:Sean.Garrison@bacalgroup.com) tel. 480.719.8501 | fax 480.245.6231 |  
6991 East Camelback, Suite D-102 | Scottsdale, Arizona 85251

No. 4. Your client has failed to fully answer the interrogatory because the only date information provided for each website is “at least as early as [YEAR].” We are entitled to know the exact date when the products were first made available and whether they are still being made available or, if discontinued, the date on which they were discontinued. Please provide a supplemental response that fully responds to the interrogatory.

Interrogatory No. 9: This interrogatory asks your client to describe any plans to expand use of its mark to other products, geographies, distribution networks or otherwise. Your client merely states that it intends to use the mark for the goods and services listed in its application. That does not answer the question posed. Please amend the answer to describe the plans to expand beyond the current use, if any exist.

Interrogatory No. 14: This interrogatory addresses your Third Defense, which claims 4Life cannot expand the use of its mark to other goods in Classes 3, 5, 30 and 32. We’ve asked that your client explain why 4Life cannot do so. The answer provided is not responsive to the question. Why does Senuvo contend that 4Life cannot expand the use of its mark to goods in these other classes? Please answer that simple question.

Interrogatory No. 15: This interrogatory addresses your client’s unclean hands defense. The answer merely states that you are in the process of collecting information, and your client “may supplement” its answer. We are entitled to know what facts you have, as of the date of your client’s answer, to support the asserted defense. Please supplement the answer either to provide them or to state that you are currently not aware of any facts.

Interrogatory No. 16: This interrogatory addresses your client’s Seventh Defense and asks your client to “set forth your proposed amended recitation of goods for Your Application, incorporating all of your proposed restrictions and limitations.” Senuvo’s answer merely refers back to your pleading, which does not set forth any recitation of goods but merely says that an amendment should be made. Please answer the interrogatory.

Interrogatory No. 17: This interrogatory addresses your counterclaim to restrict 4Life’s registration and asks simply that your client “set forth your proposed amended recitation of goods. . . , incorporating all of your proposed restrictions and limitations.” Senuvo’s answer merely refers back to its pleading, which contains no specific amended recitation of goods. Please answer the interrogatory.

We need to receive proper responses to these interrogatories by Monday, April 25.

Expert Disclosures

As originally explained in my March 2 e-mail and discussed with you on March 15, your client's expert disclosures are insufficient because you have failed to provide an expert report with the information required by Fed. R. Civ. P. 26(a)(2)(B)(i), (ii), (iii) and (vi). You have also not notified the Board of your disclosure of an expert as required. See TBMP §401.03; *RTX Scientific Inc. v. Nu-Calgon Wholesaler Inc.*, 106 USPQ2d 1492, 1493 n.3 (TTAB 2013) (a party must the notify the Board of its plan to use an expert (without including copies of expert disclosures), and that it has made required expert disclosures to adversary; the best practice is to notify the Board concurrently with the expert disclosures to adverse party). If your client has changed its mind and no longer intends to use an expert, please provide us with a written notice withdrawing Mr. Silverman. Otherwise, if we have not received a written notice of withdrawal or a compliant expert report by Monday, April 25, we will move to strike Mr. Silverman as an expert witness and/or compel an expert report.

It is my hope that we can avoid motions on these issues, but your client must abide by its discovery obligations and it has already had more than a fair opportunity to timely do so. I hope you will respond in a satisfactory manner before the deadlines that necessarily have been set in light of your prior failures to communicate.

Sincerely,

A handwritten signature in black ink, appearing to be 'SG' followed by a long horizontal stroke.

Sean D. Garrison

# EXHIBIT 6



6991 East Camelback  
Suite D-102  
Scottsdale, AZ 85251

April 21, 2016

Via E-mail

Stephen H. Bean  
Legends Law Group, PLLC  
330 N Main  
Kaysville, UT 84037

Re: 4Life Trademarks v. Senuvo; Senuvo's document production; Our file: 53287-5189

Dear Steve:

This confirms receipt of Senuvo's documents SV000072-SV000147 produced today. Thank you for those documents. Because I am taking the lead role in this case going forward, please make sure to copy me on all correspondence sent to this firm. Your paralegal's e-mail with the download link for the documents was sent only to Mr. Bacal and Ms. Tuccio.

With regard to the substance of the production, it does not comply with Fed. R. Civ. P. 34(b)(2)(E)(i), which provides, "A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request." Your documents were not produced in either acceptable fashion.

Because of that failure to produce the documents according to Rule 34, it is also difficult to know whether you have now provided a complete response to each document request. Each of your written responses concludes with the sentence, "Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to the request." For some requests, it appears that no documents have been produced, and for other requests, it is unclear whether any responsive documents have been produced. For example, and without limitation, Request Nos. 2, 3, 5 (as to YouTube examples), 8 – 21, 23, and 28-31 appear to have no responsive documents within your production today.

I also note that the Membership Application you produced (SV000144) refers to the following sets of documents that were not included in today's production: (1) "Senuvo's Policies and Procedures, including the Terms and Conditions here in;" and (2) "Senuvo Declarations &

Sean D. Garrison |  
[Sean.Garrison@bacalgroup.com](mailto:Sean.Garrison@bacalgroup.com) tel. 480.719.8501 | fax 480.245.6231 |  
6991 East Camelback, Suite D-102 | Scottsdale, Arizona 85251

Stephen H. Bean, Esq.

April 21, 2016

Page 2 of 2

Notices to Enrollers Using Paper Membership Applications.” These documents should be produced immediately and identified in connection with the appropriate request to which they are responsive. In addition, the latter reference suggests that there are also electronic applications, and no electronic applications and related documentation was produced. These would appear to be responsive to Request Nos. 6, 9, 10, 20 and/or 21 and should also be immediately produced.

Accordingly, we respectfully ask that you please fix these errors by no later than Monday, April 25, by producing the missing documents and providing us with an amended response to the document request identifying the Bates numbers of the documents produced in response to each request. If there are no responsive documents to a particular request, please indicate that in the amended response. As indicated in my letter yesterday, we will file a motion to compel if we cannot get complete and proper responses by Monday.

We are also continuing to review the documents that were produced today and if there are additional issues of noncompliance that we uncover, we will of course supplement this letter.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to be "SD" followed by a long horizontal stroke.

Sean D. Garrison

# **EXHIBIT 7**

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of:  
Application Serial No. 86127647  
for the mark SENUVO

4Life Trademarks, LLC  Opposer  v.  Senuvo, LLC  Applicant	Opposition No. 91219888  <b>APPLICANT’S RESPONSE TO OPPOSER’S FIRST SET OF INTERROGATORIES</b>
--	--

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Senuvo, LLC (“Applicant”), by and through its counsel, hereby submits the following Response To Opposer’s First Set of Interrogatories. “Discovery Request” means any interrogatory, request for production, or request for admission propounded on Applicant in this civil matter.

**General Objections**

1. Applicant objects to each and every Discovery Request to the extent and insofar as it attempts to impose requirements or obligations on Applicant beyond those imposed by the Federal Rules of Civil Procedure.
2. Applicant objects to each and every Discovery Request to the extent that it seeks information beyond the scope of Rules 26(b), 33(c) and 34 of the Federal Rules of Civil Procedure.
3. Applicant objects to each and every Discovery Request to the extent it seeks information subject to the attorney/client privilege, within the attorney’s work product immunity, or other grounds of immunity from discovery.

4. Applicant objects to each and every Discovery Request to the extent it seeks information that is unreasonably cumulative, duplicative, or obtainable from some other source that is more convenient, less burdensome, or less expensive.

5. Applicant objects to each and every Discovery Request to the extent it calls for a legal conclusion. Applicant's responses shall not be construed as providing a legal conclusion concerning the meaning or application of any term(s) or phrase(s) used in Opposer's Interrogatories and Requests for Production of Documents.

6. Applicant objects to each and every Discovery Request to the extent it seeks information not relevant to any issue in this case nor reasonably calculated to lead to the discovery of admissible evidence.

7. Applicant objects to each and every Discovery Request insofar as it seeks information not available to Applicant at this time. Applicant's responses are based upon information and writings presently available to and located by Applicant and its attorneys, subject to any applicable objections.

8. Applicant objects to Opposer's Requests for Production of Documents to the extent that the burden or expense of the Request outweighs its likely probative value.

9. Applicant objects to Opposer's definition of the "RENUVO Marks" as including any mark other than 4LIFE TRANSFER FACTOR RENUVO.

10. Applicant has not completed its investigation of the facts relating to this action, its discovery in this action, nor its preparation for trial. Therefore, Applicant's responses are without prejudice to its right to supplement or amend its responses and to present evidence discovered hereafter. By stating it will produce documents or provide information in response to any particular Discovery Request, Applicant makes no representation that such information or documents exist.

11. Applicant objects to each and every Discovery Request to the extent that it contains discrete subparts.

12. Applicant reserves the right to supplement these responses.

### **Definitions of Specific Objections**

As used in the objections below, the following terms include objections based upon their respective definitions:

- A. “Applicant,” is defined as Senuvo, LLC.
- B. “Opposer” is defined as 4Life Trademarks, LLC, its parent corporations, divisions, subsidiaries, joint ventures, predecessors or successors-in-interest, or their present and former officers, directors, agents, representatives and employees, and any other person acting on behalf of any of the foregoing.
- C. “Vague and ambiguous” is defined to mean: Applicant objects on the basis that and insofar as the Discovery Request is vague, uncertain, and ambiguous.
- D. “Overbroad” is defined to mean: Applicant objects on the basis that and insofar as the Discovery Request is overbroad and calls for an expansive potential breadth of information or documents that is unreasonable in scope, time and/or parameter.
- E. “Irrelevant” is defined to mean: Applicant objects on the basis that and insofar as the Discovery Request calls for information or production of documents irrelevant to the subject matter of this action and/or not reasonably calculated to lead to the discovery of admissible evidence.
- F. “Burdensome” is defined to mean: Applicant objects on the basis that the Discovery Request is so broad and uncertain that it creates an unreasonable and undue burden. Burdensome is also defined to mean that Applicant objects to the Discovery Request because the information or documents sought is/are more readily obtainable through other, more convenient, less burdensome, and less expensive sources, including public sources, or discovery procedures.
- G. “Privilege” is defined to mean: Applicant objects on the basis that and insofar as the Discovery Request calls for information (1) protected by the attorney-client privilege; (2) protected by the work-product doctrine; (3) protected because it consists, in whole or in part, of trial preparation materials and/or contains mental impressions, conclusions, opinions, or legal

theories of counsel; (4) otherwise protected under Rule 26 of the Federal Rules of Civil Procedure; and/or (5) protected under any other valid privilege.

H. “Including subparts” is defined to mean: Applicant objects on the basis that and insofar as the interrogatory includes discrete subparts, each representing an individual interrogatory. Applicant reserves the right to count each distinct subpart against any limitation imposed on the number of interrogatories Opposer may submit.

## **RESPONSES TO INTERROGATORIES**

### **Interrogatory No. 1**

Identify by name each of Your Products that has actually been sold to a consumer and state whether such product falls within any of the descriptions of goods recited in Your Application.

#### **Specific Objection:**

Applicant objects to this Interrogatory to the extent it purports to require Applicant to identify products unrelated to this litigation. Applicant will identify all products sold to a consumer that fall within any of the descriptions of goods recited in the Application.

#### **Answer:**

Power Energy Formula and Power Crystals Formula.

### **Interrogatory No. 2.**

Identify by name each of Your Products that has been advertised or offered for sale, but not yet sold to a consumer, and state whether such product falls within any of the descriptions of goods recited in Your Application.

#### **Specific Objection:**

Applicant objects to this Interrogatory to the extent it purports to require Applicant to identify products unrelated to this litigation. Applicant will identify all products advertised or offered for sale but not yet sold to a consumer that fall within any of the descriptions of goods recited in the Application.

**Answer:**

None.

**Interrogatory No. 3.**

Identify by name, or if no name has been adopted, by description, all products that you have under development but which have not been advertised or offered for sale, and which you intend to offer under the SENUVO mark.

**Specific Objection:**

Applicant objects to this Interrogatory to the extent it purports to require Applicant to identify products unrelated to this litigation. Applicant will identify all products under development that have not been advertised or offered for sale that fall within any of the descriptions of goods recited in the Application.

**Answer:**

None.

**Interrogatory No. 4.**

Have any of Your Products ever been sold directly to one or more of Your Customers via a website owned, operated or controlled by you? If so, identify each website on which any of Your Products has been sold directly to Your Customers and state the dates during which Your Products have been made available for sale on that website.

**Answer:**

Yes. [www.senuvo.com](http://www.senuvo.com) - at least as early as 2014; [www.mysenuvo.com](http://www.mysenuvo.com) - at least as early as 2015; [www.joinseuvo.com](http://www.joinseuvo.com) - at least as early as 2015; and [www.buysenuvo.com](http://www.buysenuvo.com) - at least as early as 2015.

**Interrogatory No. 5.**

Describe the classes of consumers to which Your Products are intended to be marketed.

**Answer:**

Health-conscious independent business consultants.

**Interrogatory No. 6.**

If different from Your answer to Interrogatory No. 5, describe the class(es) of consumers who purchase Your Products.

**Answer:**

Same answer as No. 5, above.

**Interrogatory No. 7.**

Describe in detail any restrictions that you place on your Independent Business Centers to prohibit them from selling Your Products to any Person.

**Answer:**

The Senuvo Independent Business Consultants (“IBCs”) are encouraged not to display or sell SENUVO products, services, or literature in any retail or service establishment. IBCs may not offer the SENUVO opportunity, products or services to prospective or existing customers or IBCs in conjunction with any non-SENUVO approved program, opportunity, product or service. IBCs may not offer any non-SENUVO approved opportunity, product or services at any SENUVO-related meeting, seminar, convention, or immediately following such event.

**Interrogatory No. 8.**

Describe in detail any restrictions that you place on Your Customers to prohibit Your Customers from purchasing products from other companies who market and sell dietary and/or nutritional supplements.

**Answer:**

None.

**Interrogatory No. 9.**

Describe all of your plans to expand the use of the SENUVO Mark in commerce, whether such plans include product expansion, geographic expansion, distribution network expansion, or otherwise.

**Specific Objection:**

Applicant objects to this Interrogatory as being vague and ambiguous, overbroad, irrelevant, and burdensome.

**Answer:**

Subject to and without waiving its specific and general objections, Applicants answers that it intends to use the SENUVO mark for the goods and/or services described in the Application.

**Interrogatory No. 10:**

Identify all persons who were involved in the selection and adoption of the SENUVO Mark.

**Answer:**

Bryan Davis, who can be contacted through Legends Law Group, PLLC.

**Interrogatory No. 11:**

Identify all facts upon which you base your contention that the SENUVO Mark is sufficiently different in sound, appearance, meaning, and connotation from the RENUVO Marks to avoid a likelihood of confusion.

**Answer:**

The marks SENUVO and 4LIFE TRANSFER FACTOR RENUVO are different in sound, appearance, meaning, and connotation. The facts that support this conclusion are the marks themselves.

**Interrogatory No. 12:**

If you believe that the kinds of consumers who would purchase the products you offer or will offer under the SENUVO Mark are different from the kinds of consumers who would purchase the products that 4Life offers under the RENUVO Marks on what do you base that belief?

**Specific Objection:**

Applicant objects that this Interrogatory is vague and ambiguous and calls for a speculative answer.

**Answer:**

At this time, Applicant has insufficient information regarding the kinds of consumers who purchase Opposer's products sold under the mark 4LIFE TRANSFER FACTOR RENUVO

and therefore Applicant cannot answer this interrogatory. Applicant may supplement its answer after further discovery has been taken.

**Interrogatory No. 13.**

Identify all means by which you have already advertised, or by which you intend to advertise, products or services under your SENUVO Mark.

**Answer:**

Applicant has advertised its products under the SENUVO mark on the internet websites [www.senuvo.com](http://www.senuvo.com), [www.mysenuvo.com](http://www.mysenuvo.com), [www.joinseuvo.com](http://www.joinseuvo.com), and [www.buysenuvo.com](http://www.buysenuvo.com).

Applicant has also advertised on social media such as Twitter, Facebook, and Instagram.

Applicant will not speculate on future methods of advertising.

**Interrogatory No. 14.**

With respect to your Third Defense, explain the complete factual basis for your contention that Opposer cannot expand its use of the 4LIFE TRANSFER FACTOR RENUVO mark to include “the categories of goods, whether competitive or non-competitive, in Classes 3, 5, 30 and 32 that were claimed by Applicant in its November 23, 2013 trademark filing.”

**Answer:**

On May 1, 2013, Opposer filed a single trademark application for the mark 4LIFE TRANSFER FACTOR RENUVO in class 5 for “dietary and nutritional supplements; vitamin, mineral and herbal supplement.” Six months later, on November 23, 2013, Applicant filed its trademark application for the mark RENUVO in classes 3, 5, 30, and 32 for beverage related goods, including essential oils for flavoring beverages, dietary beverage supplements in liquid and dry mix form, soy proteins for use in powdered beverages, tea bases, herbal flavorings for beverages, and fruit beverages. Opposer’s mark is limited to all four words, 4Life Transfer Factor Renuvo, in class 5 for dietary, nutritional, vitamin, mineral and herbal supplements. Opposer is attempting to narrow its mark from four word to one and expand its classes of goods from one to four. Opposer’s trademark opposition to Applicant’s pending Application is unfounded.

**Interrogatory No. 15.**

With respect to your Sixth Defense, identify all facts upon which you base your contention that Opposer is barred from opposing Your Application based upon unclean hands.

**Answer:**

At this time, discovery is ongoing and Applicant is in the process of collecting information to support its contention in the Sixth Defense. Applicant may supplement its answer after further discovery has been taken.

**Interrogatory No. 16.**

With respect to your Seventh Defense, set forth your proposed amended recitation of goods for Your Application, incorporating all of your proposed restrictions and limitations, that you contend would eliminate any likelihood of confusion with Opposer's RENUVO Marks, if the amendment is implemented.

**Answer:**

Applicant's proposal for a possible amendment to its description of goods and services is sufficiently set forth in Applicant's Seventh Defense.

**Interrogatory No. 17.**

With respect to your First Amended Counterclaim to restriction of Opposer's Registration No. 4489645 under Section 18 of the Lanham Act, set forth your proposed amended recitation of goods for Opposer's mark in Registration No. 4489645, incorporating all of your proposed restrictions and limitations.

**Answer:**

Applicant's proposal for a possible amendment to Opposer's description of goods and services in its registration is sufficiently set forth in Applicant's First Amended Counterclaim.

**Interrogatory No. 18.**

When did you first become aware of 4Life, its products or services, or its RENUVO Marks?

**Specific Objection:**

Applicant objects that this Interrogatory is vague and ambiguous.

**Answer:**

Applicant first learned of 4Life in 2004 when the Federal Food and Drug Administration (“FDA”) published a formal FDA Warning Letter it had sent to the 4Life company for making fraudulent product claims. Applicant first learned of Opposer’s products in general at the time this FDA warning letter was published. Applicant first learned of the 4LIFE TRANSFER FACTOR RENUVO mark when the trademark opposition was filed. Applicant has no knowledge of Opposer’s services.

**Interrogatory No. 19.**

Describe the purpose of any facility you have ever owned, leased, operated within, or otherwise used at 10542 S. Jordan Gateway, #300, South Jordan, Utah 84095.

**Answer:**

The facility was used as a business office.

**Interrogatory No. 20.**

Identify all Persons who participated in the preparation of your responses to 4Life’s interrogatories, requests for admission and/or requests for production, whether such participation consisted of providing information for the answers, providing documents or electronically stored information relating to your answers and/or actually preparing the written responses. For each Person identified, explain the scope of their participation.

**Answer:**

Bryan Davis, who can be contacted through Legends Law Group, PLLC.

**Interrogatory No. 21.**


Identify all documents, electronically stored information, or tangible items referred to or used in preparing your responses to 4Life’s interrogatories.

**Answer:**

Applicant relied on the parties’ public trademark filings and the documents filed in this proceeding to prepare these responses.

Dated: March 2, 2016.

SENUVO, LLC

By: 

Stephen H. Bean, Esq.,  
Legends Law Group, PLLC  
330 N Main  
Kaysville, UT 84037  
(801) 337-4500

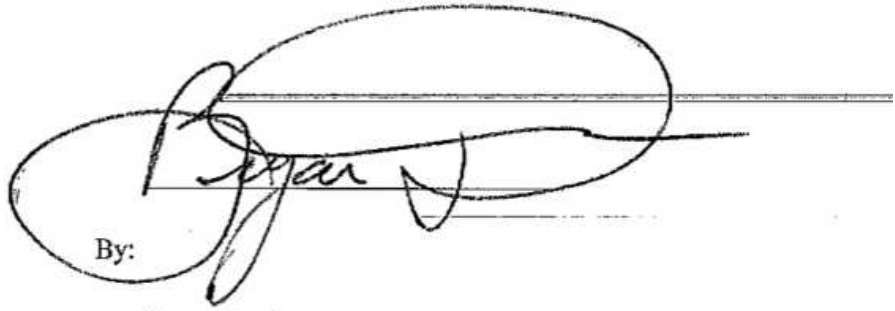
Attorney for Applicant

### **VERIFICATION**

I, Bryan Davis, declare:

I am the owner of Senuvo, LLC. I reviewed Applicant's Response to Opposer's First Set of Interrogatories. I verify that the Applicant's answers to the interrogatories are true and correct. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and understanding.

Dated: March 2, 2016

By:   
Bryan Davis  
Senuvo, LLC

**CERTIFICATE OF SERVICE**

I hereby certify that on Wednesday, March 2, 2016, I caused a true and correct copy of **APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES** to be delivered by email, as agreed between the parties, as follows:

Glenn Spencer Bacal  
Bacal Law Group, P.C. 6991 E. Camelback Rd., Ste D-  
102 Scottsdale, AZ 85251  
[Glenn.Bacal@bacalgroup.com](mailto:Glenn.Bacal@bacalgroup.com)

with a copy to :  
Jamie Tuccio  
[Jamie.Tuccio@bacalgroup.com](mailto:Jamie.Tuccio@bacalgroup.com)

By: Steve Beam

# EXHIBIT 8

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of:  
Application Serial No. 86127647  
for the mark SENUVO

4Life Trademarks, LLC  Opposer  v.  Senuvo, LLC  Applicant	Opposition No. 91219888  <b>APPLICANT’S RESPONSE TO OPPOSER’S FIRST REQUESTS FOR PRODUCTION</b>
--	---

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Senuvo, LLC (“Applicant”), by and through its counsel, hereby submits the following Response to Opposer’s First Requests for Production.

**General Objections**

The General Objections and Definitions of Specific Objections recited in Applicant’s Response to Opposer’s First Set of Interrogatories are incorporated herein by reference.

**RESPONSES TO REQUEST FOR PRODUCTION**

**Request for Production No. 1**

Produce representative examples of Documents showing the appearance of the SENUVO Mark and all variations thereof, including the different stylizations, fonts, colors, and designs that you have used or intend to use with the SENUVO Mark.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents

available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

### **Request for Production No. 2**

Produce Documents evidencing all marks that you considered adopting prior to selecting the SENUVO Mark.

#### **Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

### **Request for Production No. 3**

Produce Documents evidencing your earliest use of the SENUVO Mark in commerce.

#### **Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

### **Request for Production No. 4**

Produce representative examples of Documents showing your actual and/or proposed use of the SENUVO Mark on the Internet, including without limitation in connection with domain names or websites owned or controlled by you.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

**Request for Production No. 5**

Produce representative examples of Documents showing your actual and/or proposed use of the SENUVO Mark in social media, such as Facebook, Twitter and YouTube.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

**Request for Production No. 6**

Produce representative examples of Documents showing actual or proposed use of the SENUVO Mark on labels, product packaging, displays, signage, advertisements, and any other electronic or printed materials.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less

expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

**Request for Production No. 7**

Produce Documents identifying all of the different kinds of products or services with which you have used or intend to sue the SENUVO Mark.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

**Request for Production No. 8**

Produce all Documents evidencing your plans to commence or expand use of the SENUVO Mark in the United States.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

**Request for Production No. 9**

Produce Documents identifying and illustrating each of the different means or channels (e.g. Internet, television, radio, newspaper, print ad, social media) by which you have marketed or advertised or intend to market or advertise products or services under the SENUVO Mark.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

**Request for Production No. 10**

Produce Documents identifying and illustrating all means or locations (e.g. retail stores, online sales) through or at which you have offered or sold, or intend to offer or sell, products or services under the SENUVO Mark.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

**Request for Production No. 11**

Produce all Documents that were in your possession, custody, or control prior to 4Life's filing of this opposition, which discuss or refer to 4Life, any of its goods, or any of its RENUVO Marks.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents

available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

**Request for Production No. 12**

Produce the Documents that you contend support your assertion that the SENUVO Mark is different from the RENUVO Marks as to sound, appearance, meaning, or connotation.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

**Request for Production No. 13**

Produce the Documents that you contend support your assertion that the products offered or to be offered under the SENUVO Mark are not commercially related to 4Life's products offered under its RENUVO Marks.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

**Request for Production No. 14**

Produce the Documents that you contend support your assertion that the channels of trade in which you market and sell, or intend to market and sell, products under the SENUVO Mark

are different from the channels of trade in which 4Life's products are marketed and sold under the RENUVO Marks.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

**Request for Production No. 15**

Produce all Documents evidencing or discussing the kinds of consumers that have purchased, and/or that you anticipate will purchase, the products or services offered or to be offered under the SENUVO Mark.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

**Request for Production No. 16**

Produce Documents evidencing or discussing all of the kinds of consumers to whom you have marketed any products or services offered under the SENUVO Mark.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials

outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

**Request for Production No. 17**

Produce Documents evidencing or discussing all of the kinds of consumers to whom you intend to market any products or services offered or to be offered under the SENUVO Mark.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

**Request for Production No. 18**

Produce all business plans evidencing or discussing the marketing and/or distribution of products under the SENUVO Mark.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

### **Request for Production No. 19**

Produce all marketing plans related to the SENUVO Mark and/or the marketing of products under the SENUVO Mark.

#### **Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

### **Request for Production No. 20**

Produce examples of all agreements, or other terms and conditions, applicable to your Independent Business Centers regarding the marketing, advertising, selling and/or distribution of products or services under the SENUVO Mark.

#### **Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

### **Request for Production No. 21**

Produce examples of all agreements, or other terms and conditions, to which your customers must execute or otherwise agree in order to purchase products or services sold under the SENUVO Mark.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

**Request for Production No. 22**

Produce Documents that show or reference the searches or search reports regarding the SENUVO Mark or any variation thereof, which you conducted, authorized, or know about.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

**Request for Production No. 23**

Produce all Documents regarding your decision to adopt the SENUVO Mark.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less

expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

**Request for Production No. 24**

Produce all Documents that demonstrate, mention or discuss instances in which any person has expressed any confusion or mistake regarding whether you or your goods and services are related to, associated with, or sponsored by 4Life.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

**Request for Production No. 25**

Produce all Documents that demonstrate, mention or discuss instances in which any person has expressed any confusion or mistake about whether 4Life is the source of, endorses or is affiliated with any product or service advertised or sold under the SENUVO Mark.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

### **Request for Production No. 26**

Produce all Documents that Demonstrate, mention or discuss instances in which any person has expressed any confusion or mistake regarding the SENUVO Mark and any of the RENUVO Marks.

#### **Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

### **Request for Production No. 27**

Produce all Documents that Demonstrate, mention or discuss instances in which any person has inquired about whether there is any association or relationship between you, your products, or the SENUVO Mark on the one hands, and 4Life, its products or services, or its RENUVO Marks on the other hand.

#### **Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

### **Request for Production No. 28**

Produce all Documents that mention or show when you first became aware of 4Life, its products or services, or its RENUVO Marks.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

**Request for Production No. 29**

Produce the Documents you contend support your affirmative defense of unclean hands by 4Life.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

**Request for Production No. 30**

Produce the Documents you contend support your counterclaim that the limitations and/or restrictions you propose to include in 4Life's Registration will prevent any likelihood of confusion between the 4Life registered mark and the SENUVO Mark.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less

expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

**Request for Production No. 31**

Produce all Documents that you referred to or used in responding to 4Life's interrogatories or requests for admission.

**Answer:**

Applicant objects to this Request to the extent it seeks information and/or production of documents protected by the attorney-client privilege, the work product doctrine or any other applicable privilege. Applicant further objects to this request to the extent it seeks materials outside the custody and control of Applicant or to the extent the request seeks documents available from another source that is more convenient, less burdensome on Applicant or less expensive to produce. Subject to and without waiving its General and specific objections, Applicant will produce relevant, non-privileged documents, if any, responsive to this request.

Dated: March 2, 2016.

SENUVO, LLC

By: 

Stephen H. Bean, Esq.,  
Legends Law Group, PLLC  
330 N Main  
Kaysville, UT 84037  
(801) 337-4500

Attorney for Applicant

**CERTIFICATE OF SERVICE**

I hereby certify that on Wednesday, March 2, 2016, I caused a true and correct copy of **APPLICANT'S RESPONSE TO OPPOSER'S FIRST REQUESTS FOR PRODUCTION** to be delivered by email, as agreed between the parties, as follows:

Glenn Spencer Bacal  
Bacal Law Group, P.C. 6991 E. Camelback Rd., Ste D-  
102 Scottsdale, AZ 85251  
[Glenn.Bacal@bacalgroup.com](mailto:Glenn.Bacal@bacalgroup.com)

with a copy to :  
Jamie Tuccio  
[Jamie.Tuccio@bacalgroup.com](mailto:Jamie.Tuccio@bacalgroup.com)

By: Steve Beam